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CSA Notice and Request for Comment
Proposed Amendments and Changes to the Issuer Bid, Take-Over Bid and Beneficial Ownership Reporting Regimes

May 14, 2026

A. Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing, for a 90-day comment period, proposed amendments to

- National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**),
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (**NI 62-103**), and
- National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**)

(collectively, the **Proposed Amendments**), proposed changes to

- Companion Policy 51-102CP *Continuous Disclosure Obligations* (**51-102CP**), and
- National Policy 62-203 *Take-Over Bids and Issuer Bids* (**NP 62-203**)

(collectively, the **Proposed Changes**), related proposed consequential amendments to

- Multilateral Instrument 13-102 *System Fees* (**MI 13-102**),
- National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**),
- National Instrument 44-102 *Shelf Distributions* (**NI 44-102**),
- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (**MI 51-105**),
- Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**), and

in the jurisdictions in which such instruments have been adopted (collectively, the **Consequential Amendments**), and related proposed consequential changes to

- Companion Policy 55-104CP *Insider Reporting Requirements and Exemptions* (**55-104CP**), and
- Companion Policy 61-101CP *To Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions* (**61-101CP**)

in the jurisdictions in which such policies have been adopted (collectively, the **Consequential Changes**).

The text of the Proposed Amendments, the Proposed Changes, the Consequential Amendments, and the Consequential Changes are set out in Annexes A through L of this Notice, and will also be available on websites of CSA jurisdictions, including:

lautorite.qc.ca
asc.ca
bcsc.bc.ca
mbsecurities.ca
nssc.novascotia.ca
fcnb.ca
osc.ca
fcaa.gov.sk.ca

B. Substance and Purpose

The Proposed Amendments and the Proposed Changes are intended to provide issuers with greater flexibility to repurchase their own securities, enhance transparency of ownership of derivative interests in specified circumstances, and reduce regulatory burden and enhance the integrity of the issuer bid, take-over bid, and early warning reporting regimes through clarifying amendments and supplemental policy guidance. In particular, the Proposed Amendments and the Proposed Changes would:

- introduce a new issuer bid exemption to allow selective repurchases by an issuer of securities of its own issue, subject to certain parameters;

- require enhanced disclosure with respect to interests in derivatives that substantially replicate the economic consequences of ownership (**equity equivalent derivatives**) and other agreements, arrangements, or understandings that have the effect of altering economic exposure to an issuer in the context of take-over bids and proxy solicitations for which an information circular is required to be sent;

- provide further guidance on the circumstances where the disclosure or use of equity equivalent derivatives may engage the public interest jurisdiction of securities regulatory authorities;

- provide guidance on the appropriate timing of disclosure of an acquiror's "plans or future intentions" in an early warning report (an **EWR**);

- specify filing requirements and clarify the appropriate application or interpretation of certain provisions in respect of take-over bids, issuer bids, and the early warning reporting regime (the **early warning system**); and

- address certain issues of a targeted or housekeeping nature related to circumstances where exemptive relief is currently required.

C. Summary of Proposed Amendments and Proposed Changes

1. New Selective Repurchase Exemption

We have proposed a new exemption, as section 4.6.1 of NI 62-104, that would allow issuers to repurchase up to 5% of the outstanding securities of a class in a 12-month period, provided that certain conditions are satisfied (the **Selective Repurchase Exemption**).

(a) Background

Subject to certain limited exceptions, an offer to acquire or redeem securities of an issuer made by the issuer to one or more persons in Canada, including an acquisition or redemption of securities of the issuer by the issuer from those persons, constitutes an "issuer bid".[1] An issuer that wishes to acquire or redeem its securities must either comply with the issuer bid requirements set out in Part 2 of NI 62-104 or rely on one of the exemptions set out in Part 4 of NI 62-104. Although section 4.2 of NI 62-104 exempts an offeror from the take-over bid requirements if purchases are made from a limited number of sellers in compliance with certain pricing restrictions, there is no corresponding "private agreement" exemption from the issuer bid requirements.

Recently, we have observed increased interest in selective repurchases. Various stakeholders have suggested that the Canadian issuer bid regime is overly restrictive, particularly given that selective repurchases are permissible in the United States (**U.S.**). These stakeholders have commented that an issuer's inability to repurchase securities selectively can lead to potential market dispositions by blockholders, which in turn can result in an overhang that artificially depresses the market price of the securities to the detriment of all securityholders. These stakeholders have also commented that the Canadian issuer bid regime can inhibit investment since blockholders have fewer avenues for liquidity in Canada relative to other jurisdictions.

(b) Policy Rationale for the Selective Repurchase Exemption

The proposed Selective Repurchase Exemption, described further below, represents a significant enhancement to the Canadian issuer bid regime, which currently does not permit bilateral private agreement share repurchases by issuers. We think it is appropriate to introduce the Selective Repurchase Exemption in order to:

- enhance the competitiveness of Canadian capital markets by easing restrictions on repurchases by issuers;

- provide issuers with greater flexibility to allocate their capital and undertake selective repurchases where a board of directors determines that doing so is in the issuer's best interests;

[1] Pursuant to the definition of "issuer bid" in section 1.1 of NI 62-104, an offer to acquire or redeem, or an acquisition or redemption, does not constitute an issuer bid if: (a) no valuable consideration is offered or paid by the issuer for the securities; (b) the offer to acquire or redeem, or the acquisition or redemption, is a step in an amalgamation, merger, reorganization or arrangement that requires approval in a vote of security holders; or (c) the securities are debt securities that are not convertible into securities other than debt securities.

- enhance the attractiveness of Canadian investment by providing investors with more liquidity for larger blocks of securities;

- maintain a fair and efficient regime by limiting the availability of the exemption to classes of securities for which a liquid market exists, and requiring that a selective repurchase occur at a discount to the closing price of the class of securities on the market on which the class is principally traded;

- maintain a transparent regime that requires timely disclosure of repurchases made in reliance on the exemption; and

- reduce regulatory burden by codifying an exemption where issuers previously had to apply for and obtain formal exemptive relief.

(c) Specific Elements of the Selective Repurchase Exemption

(i) Repurchase limit

Issuers would be able to acquire up to 5% of the securities of a class within a 12-month period in reliance on the Selective Repurchase Exemption. The 5% limit is intended to facilitate repurchases of meaningfully sized blocks of securities as desired by issuers while minimizing the potential for undue market impact that could result from the disposition of particularly large blocks. In addition, we believe 5% to be an appropriate threshold having regard to the fact that, in the aggregate, an issuer could potentially repurchase up to 20% of the securities of a class in a given 12-month period by relying on a combination of the Selective Repurchase Exemption, the employee, officer, director, and consultant exemption in section 4.7 of NI 62-104, and the normal course issuer bid (**NCIB**) exemption in section 4.8 of NI 62-104 (the **NCIB Exemption**).[2]

(ii) Purchaser and transaction limits

The Selective Repurchase Exemption would allow issuers to acquire securities of their own issue from not more than 5 persons in the aggregate in not more than 5 transactions in the aggregate, in a 12-month period. The 5 person and 5 transaction limit in a 12-month period is intended to provide issuers with flexibility, including the ability to repurchase from a particular person on 5 separate occasions within the 12-month period, while precluding issuers from establishing *de facto* normal

[2] The NCIB Exemption provides an exemption from the issuer bid requirements for NCIBs that are conducted: (i) through the facilities of a "designated exchange" (as that term is defined in NI 62-104), if that bid is made in accordance with the by-laws, rules, regulations, and policies of that exchange (the **Designated Exchange Exemption**); and/or (ii) on a published market, other than a designated exchange, subject to certain conditions (the **Other Published Markets Exemption**). Repurchases under the Other Published Markets Exemption are limited to 5% of the securities of a class whereas up to 10% of an issuer's "public float" (as defined in the rules, regulations, and policies of the designated exchange) may be repurchased under the Designated Exchange Exemption. These purchase limits may not be "piggy-backed" or "stacked" so that an issuer can repurchase 10% of its public float in reliance on the Designated Exchange Exemption and then purchase an additional 5% of its issued and outstanding securities in reliance on the Other Published Markets Exemption. If an issuer's public float is the same as the number of securities of the class that are issued and outstanding, then the issuer could repurchase up to 20% of the securities of the class in a given 12-month period in reliance on a combination of the Selective Repurchase Exemption, the employee, officer, director, and consultant exemption in section 4.7 of NI 62-104, and the NCIB Exemption.

course repurchase programs with select shareholders in parallel with, and potentially in lieu of, NCIBs in reliance on the NCIB Exemption.

(iii) Requirements for discount and liquid market

The Selective Repurchase Exemption would only be available where the value of the consideration paid for any of the securities acquired in reliance on the exemption, including any brokerage fees or commissions, is less than the closing price of the class of securities that is the subject of the bid on the market on which the class is principally traded at the date of the bid. The exemption also requires that a liquid market in the class of securities exists at the date of the bid, the meaning of which is derived from section 1.2 of MI 61-101. Relatedly, the issuer's board of directors must determine that, following the completion of the bid, the market for the class of securities would not reasonably be expected to be materially less liquid than the market that existed at the date of the bid, and that the bid would not reasonably be expected to have a significant negative effect on the market price or value of the class of securities. Collectively, these conditions help to mitigate concerns that a blockholder may be receiving preferential treatment such that the offer should be made to all securityholders, as non-participating securityholders should be able to sell their securities on a stock exchange or other published market at an equal or greater price than the price being received by the blockholder should they wish to do so.

(iv) Disclosure requirements

The Selective Repurchase Exemption also requires that the issuer issue and file a news release after making the bid and before the opening of trading of the market on which the class of securities is principally traded disclosing the details of the transaction and the number or principal amount of securities acquired by the issuer within the preceding 12-month period in reliance on the exemption. Such disclosure provides investors with information that may impact their decisions to acquire, hold, or dispose of securities, and enables the market and securities regulatory authorities to monitor issuers' compliance with the limits of the Selective Repurchase Exemption.

(v) Interaction with other issuer bid exemptions

The 5% limit applies to securities acquired by an issuer within any period of 12 months in reliance on the Selective Repurchase Exemption. Accordingly, securities acquired by an issuer pursuant to a non-exempt issuer bid or in reliance on another exemption in Part 4 of NI 62-104, including the NCIB Exemption, would not reduce the aggregate number or aggregate principal amount of securities that the issuer could acquire in reliance on the Selective Repurchase Exemption. We are of the view that securities acquired by an issuer in reliance on the Selective Repurchase Exemption similarly should not reduce the maximum number of securities that an issuer may acquire in reliance on the NCIB Exemption. As NCIBs are subject to the bylaws, rules, regulations, and policies of designated exchanges, we will engage with the designated exchanges about potential corresponding amendments to their rules or clarifying guidance so that securities acquired in reliance on the Selective Repurchase Exemption do not impact an issuer's use of the NCIB Exemption.

2. Enhanced Disclosure of Equity Equivalent Derivatives in Specified Circumstances

We have proposed amendments to enhance the quality of disclosure in respect of equity equivalent derivatives and agreements, arrangements, or understandings that alter economic exposure to an issuer in the particular circumstance of a take-over bid or proxy solicitation for which an information circular is required to be sent. We have also proposed guidance to aid market participants in understanding the disclosure and use of derivatives that we consider to be inappropriate and that can result in regulatory intervention.

(a) Background

In general, equity equivalent derivatives (such as total return swaps and contracts for difference) do not have to be counted for purposes of determining whether an investor has crossed an early warning reporting threshold, unless the investor has the ability, formally or informally, to obtain the voting or equity securities or to direct the voting of securities held by derivative counterparties.

In 2013, the CSA considered amending the early warning system to deem investors to have control or direction over voting or equity securities underlying derivative positions in all circumstances, thereby requiring their inclusion for purposes of determining whether an early warning reporting threshold had been crossed. The CSA determined not to proceed with those amendments following a consideration of concerns raised by commenters. Among other things, commenters submitted that there was no clear evidence to suggest that derivatives are used in Canada as a means to accumulate substantial economic positions in issuers without public disclosure to exert influence over issuers or voting outcomes, and that the inclusion of derivatives would create a significant compliance burden that may render the early warning threshold calculation unduly complex and onerous for investors without providing relevant information to the market.[3]

Although the CSA concluded, in 2014, that it was not appropriate to proceed with the proposal to require the inclusion of equity equivalent derivatives for the purposes of determining whether an early warning reporting obligation had been triggered, the CSA added guidance to NP 62-203 regarding the circumstances in which an investor may have to include in the early warning threshold calculation an equity swap or similar derivative arrangement. The CSA also added enhanced disclosure requirements in EWRs of an investor's economic and voting interests in the class of securities of the reporting issuer to which the EWR relates, including disclosure about the material terms of related financial instruments, securities lending arrangements, and other agreements, arrangements, or understandings that have the effect of altering the acquiror's economic exposure.

In a recent securities regulatory decision,[4] an Alberta Securities Commission panel considered a bidder's use and disclosure of cash settled total return swaps in connection with an unsolicited take-over bid. The panel determined that the bidder had complied with applicable early warning disclosure requirements, but found that the bidder's use and disclosure of the total return swaps,

[3] *CSA Notice of Amendments to Early Warning System – Amendments to MI 62-104 Take-Over Bids and Issuer Bids, NI 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, and Changes to NP 62-203 Take-Over Bids and Issuer Bids*, (2016) 39 OSCB 1746.

[4] *Re Bison Acquisition Corp*, 2021 ABASC 188.

in the specific facts of that matter, was clearly abusive of both the capital markets and the target's securityholders.

In 2022, the U.S. Securities and Exchange Commission (**SEC**) proposed amendments to the U.S. beneficial ownership reporting regime that, in part and subject to conditions, would have deemed holders of certain cash settled derivatives as beneficial owners of the reference securities for the purposes of that regime, including for determination of the reporting trigger.[5] The SEC received a number of comments indicating that the proposal would add needed market transparency that, among other things, would allow securityholders to better assess whether to support or oppose activists' proposals.[6] However, the SEC did not adopt this aggregation proposal, citing several commenters' objections including a lack of evidence as to whether there was an actual problem in the marketplace to be solved, that the proposal was overly broad and would be difficult to administer, and that compliance would be complex, as well as concerns on the part of some commenters that the proposal could inhibit activist investment strategies.[7] The SEC instead chose to adopt a guidance-based approach noting that whether the holder of any cash-settled derivative security is the beneficial owner of the reference covered class ultimately will depend on the relevant facts and circumstances.[8] While the SEC adopted other changes to the U.S. beneficial ownership reporting regime, it did so noting that those changes were not intended to discourage activism, but rather to ensure that investors receive material information in a timely manner while maintaining an appropriate balance between issuers of securities and the shareholders who seek to exert influence or control over issuers.[9]

(b) Policy Rationale for Proposed Amendments and Proposed Changes

(i) Consideration of aggregation of beneficial ownership and economic interests

We have considered whether the securities regulatory approach concerning the treatment of equity equivalent derivatives ought to be adjusted in light of the established use of derivatives in investment strategies, changing market conditions, concerns about possible misuse of equity equivalent derivatives, varied international regulatory approaches to aggregation and disclosure of derivatives, and the existing discrepancies in the scope and transparency of disclosure of beneficial ownership and economic interests during take-over bids and proxy solicitation campaigns.

We recognize that derivatives can potentially give rise to unique activities in the context of a take-over bid or matter subject to securityholder approval, including hidden ownership[10], empty

[5] SEC, *Modernization of Beneficial Ownership Reporting*, Release Nos. 33-11030; 34-94211 (February 10, 2022).

[6] SEC, *Modernization of Beneficial Ownership Reporting*, Release Nos. 33-11253; 34-98704 (October 10, 2023) at 109-110.

[7] *Ibid* at 110-112.

[8] *Ibid* at 113-115.

[9] *Ibid* at 236.

[10] A party that does not have a passive intent in respect of a reporting issuer (*e.g.*, a party considering commencing a take-over bid, proposing a control transaction, and/or soliciting proxies in opposition to management) may be able to use derivatives to accumulate a substantial economic interest in an issuer without public disclosure and acquire the underlying securities in advance of a vote.

tendering[11], empty voting[12], and "parking"[13]. In general, concerns that could arise in connection with those activities are substantially mitigated through compliance with the existing early warning system and related guidance concerning deemed beneficial ownership of, or control or direction over, the reference voting or equity securities. We also do not have evidence that derivatives are being used inappropriately or abusively with any regularity in our capital markets. As a result, we do not think that it is appropriate to alter the early warning system to require aggregation of beneficial ownership and economic interests for the purposes of calculating the early warning reporting triggers. Although other jurisdictions around the world require aggregation of beneficial ownership and economic interests,[14] we think that approach could impose a disproportionate burden relative to potential concerns, particularly in the absence of clear evidence to suggest that derivatives are being used in a manner contrary to the purposes of Canadian securities laws.

(ii) New disclosure requirements in specified circumstances

Based on our review, we think that disclosure of bidders' and soliciting securityholders' aggregate economic positions (*i.e.*, a combination of beneficial ownership and economic interests in related financial instruments and other agreements, arrangements, or understandings that have the effect of altering economic exposure to the issuer) in the context of take-over bids and proxy solicitations for which an information circular is required to be sent will support confidence in our capital markets by providing more balanced transparency of the totality of parties' interests in special circumstances where securityholders are induced to make tendering or voting decisions.

There is currently an asymmetry of information concerning the aggregate economic position of a bidder or soliciting securityholder when a take-over bid or proxy solicitation for which an information circular is required to be sent, as applicable, is commenced. Insiders of reporting issuers are required to disclose their aggregate economic positions in accordance with insider reporting obligations; however, there is no express comparable requirement for bidders or soliciting securityholders who are not insiders to disclose their aggregate economic positions in an information circular or otherwise. Bidders and soliciting securityholders who have an interest in equity equivalent derivatives will, themselves, be aware of the existence, terms, and duration of those agreements, as well as the possibility that the counterparties may have hedged their positions by acquiring the reference securities. In a take-over bid or contest for control, that information is material to a securityholder's understanding in order to:

- evaluate whether such interests are pertinent to the bidder or soliciting securityholder's influence and leverage in the determination of the matter;

[11] A derivative counterparty could hedge and tender the underlying securities to a take-over bid despite not having an economic interest in the outcome of the bid, which could benefit a bidder.

[12] A derivative counterparty could hedge and vote on a matter subject to securityholder approval despite not having an economic interest in the outcome of matter.

[13] A derivative counterparty could hedge and not tender the underlying securities to a take-over bid, which could benefit a party that is opposed to the bid. A derivative counterparty could hedge and refrain from voting on a matter subject to securityholder approval, thereby amplifying the relative voting power of all other securityholders.

[14] For example, the United Kingdom, France, Hong Kong and Australia.

- understand that any securities underlying equity equivalent derivatives held by the bidder or soliciting securityholder are subject to counterparty tendering and voting practices; and

- assess the viability of success of the bid or solicitation and potential alternative options.

We recognize that take-over bids and shareholder activism can serve as accountability mechanisms in our capital markets, and are mindful that any new disclosure requirements could potentially have unintended impacts on bidders and activists. We are not proposing to require real-time disclosure of accumulations of equity equivalent derivatives during stake-building in anticipation of a bid or proxy solicitation, or that any new disclosure of such interests be required for proxy solicitations made in reliance on the "quiet solicitation" or "public broadcast" exemptions.[15] Rather, the proposed new disclosure requirements related to equity equivalent derivatives would apply only when there is a formal, public overture for control. We think this represents a relatively minimal intrusion into take-over bids and shareholder activism, and one which maintains an appropriate balance between issuers of securities and investors who seek to exert influence or control over issuers.

(A) Specific Elements of Proposed Amendments

We have proposed amendments to NI 62-104, Form 62-104F1 *Take-Over Bid Circular* (**Form 62-104F1**), NI 51-102, and Form 51-102F5 *Information Circular* (**Form 51-102F5**) to enhance the quality of disclosure in respect of equity equivalent derivatives and agreements, arrangements, or understandings that alter economic exposure to an issuer in the context of take-over bids and proxy solicitations made other than by or on behalf of management of an issuer for which an information circular is required to be sent.

The proposed "equity equivalent derivative" concept is substantially similar to the one proposed by the CSA in 2013, modified to reflect that a combination of derivatives, taken together, can provide economic exposure that substantially replicates the economic consequences of ownership. We would generally consider a derivative or combination of derivatives to substantially replicate the economic interest of owning a reference security if it provides a rate of return between 90% and 110% of the rate of return of the reference security and have proposed guidance to this effect in section 3.1 of NP 62-203. A cash settled equity total return swap or substantially similar derivative would come within our proposed definition of "equity equivalent derivative".

In the case of bidders, we have proposed the following:

- The addition of Item 8.1 to Form 62-104F1 to require prescribed disclosure in a take-over bid circular if the offeror, or any person acting jointly or in concert with the offeror (i) has, or had at any time during the 6-month period preceding the date of the take-over bid, an interest in, or right or obligation associated with, a related financial instrument involving a voting or equity security of the offeree issuer, including an equity equivalent derivative, or (ii) is a party, or has been a party at any time during the 6-month period preceding the date of the take-over bid, to any agreement, arrangement, or understanding that has or had the effect of altering, directly or indirectly, the economic exposure of the offeror or the person

[15] NI 51-102, subsections 9.2(2) and 9.2(4).

acting jointly or in concert with the offeror to the offeree issuer and disclosure is not otherwise required by (i) above. The purpose of the 6-month look-back disclosure in proposed Item 8.1, which is analogous to existing Item 7 of Form 62-104F1 requiring disclosure of trading in securities of the offeree issuer in the previous 6 months, is to provide enhanced transparency of trading activities that may have improperly impacted the price of the offeree issuer's securities in the period preceding a take-over bid.[16]

- The addition of section 2.7.1 to NI 62-104 to require an offeror to issue and file a news release containing prescribed disclosure before the opening of trading on the business day following the relevant action if, during the pendency of a take-over bid, an offeror (i) acquires or disposes of an interest in, or right or obligation associated with, a related financial instrument involving voting or equity securities of the offeree issuer, including an equity equivalent derivative, or there is a change in an offeror's interest in, or right or obligation associated with, the related financial instrument, or (ii) enters into, terminates, or amends an agreement, arrangement, or understanding that has the effect of altering the offeror's economic exposure to the offeree issuer and disclosure is not otherwise required by (i) above.

- The requirement in paragraphs 2.7.1(1)(c) and 2.7.1(2)(b) of NI 62-104 and Items 8.1(1)(d) and 8.1(2)(c) of Form 62-104F1 to describe any past or present relationship between the offeror or any joint actor and a counterparty, or an affiliate of the counterparty, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of, or vote securities of the offeree issuer, or, if there is no such relationship, a statement to that effect. We have also proposed guidance in section 3.1 of NP 62-203 relating to relationships for which disclosure would be required.

In the case of soliciting securityholders, we have proposed the following:

- The addition of subsection 5.1(6) to NI 62-104 to deem an acquiror or a person acting jointly or in concert with the acquiror, for the purposes of sections 5.2 and 5.4 of NI 62-104 and only during the pendency of a proxy solicitation campaign, to have acquired, and to have, control or direction over a security, including an unissued security, if the acquiror or the person acting jointly or in concert with the acquiror is a counterparty to an equity equivalent derivative of the security. The purpose of this deeming provision is to require, by application of the early warning system, disclosure of changes in a soliciting securityholder's aggregate economic position, whether through beneficial ownership of securities or through economic interests in equity equivalent derivatives, subsequent to the filing of its proxy circular in circumstances where its aggregate economic position is equivalent to a beneficial ownership position of 10% or more of the outstanding securities of the class.

[16] For example, a prospective offeror repeatedly accumulating and/or disposing of substantial economic positions via equity equivalent derivatives could result in the counterparty hedging its position by repeatedly acquiring and/or disposing of the reference securities, which could have a distortive impact on the market price, particularly if the securities are relatively illiquid. A prospective bidder could also time market purchases of equity securities in coordination with their derivative arrangements in a manner that impugns compliance with the provisions of NI 62-104 that regulate pre-bid acquisitions.

- The addition of Items 6.6, 6.7, and 6.8 to Form 51-102F5, which apply to a solicitation made other than by or on behalf of management of a company, to require prescribed disclosure in an information circular of certain persons' or companies' (i) beneficial ownership of, or control or direction over, voting securities of the company, (ii) interest in, or right or obligation associated with, a related financial instrument involving voting or equity securities of the company, including an equity equivalent derivative, and (iii) agreements, arrangements, or understandings that have the effect of altering, directly or indirectly, the persons' or companies' economic exposure to the company and disclosure is not otherwise required by (ii) above.

- Amendments to subparagraph 9.2(4)(c)(ii) of NI 51-102 to require a person or company soliciting proxies in reliance on the public broadcast, speech, or publication exemption in subsection 9.2(4) of NI 51-102 to provide prescribed disclosure of certain persons' or companies' beneficial ownership of, or control or direction over, voting securities of the company.

- The requirement in Items 6.7(d) and 6.8(c) of Form 51-102F5 to describe any past or present relationship between a person or company referred to in Item 6.6 of Form 51-102F5 and a counterparty, or an affiliate of the counterparty, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the company, or, if there is no such relationship, a statement to that effect. We have also proposed guidance in section 9.4 of 51-102CP regarding relationships for which disclosure would be required.

(iii) <u>New guidance on disclosure and use of derivatives</u>

We have proposed guidance in section 3.1 of NP 62-203 and section 9.4 of 51-102CP to aid market participants in understanding the requirements applicable to equity equivalent derivatives. In particular, the proposed guidance affirms that we expect equity equivalent derivatives to be disclosed in compliance with securities laws, having regard to circumstances where beneficial ownership of, or control or direction over, reference securities may be deemed. The proposed guidance also indicates that the disclosure or use of equity equivalent derivatives in a manner that is abusive of the capital markets may engage securities regulatory authorities' public interest jurisdiction. For example, we may have public interest concerns where investors do not clearly and accurately differentiate between beneficial ownership of securities and economic interests in their public disclosures and instead express them as an aggregate economic interest, which can generate confusion in the market. We may also have public interest concerns where equity equivalent derivatives are used in a deliberate effort to accumulate substantial economic positions in an issuer if the holder seeks to influence the outcome of a potential take-over bid or matter subject to securityholder approval by either exerting pressure on a counterparty or communicating expectations of commercial incentives or disincentives for the counterparty or its affiliates dependent on how or when the counterparty acquires, disposes of, or votes securities of the offeree issuer.

3. Disclosure and Timing Requirements for Acquirors' Plans or Future Intentions

In 2016, the CSA adopted certain amendments to the early warning system, including requiring more detailed information regarding the purpose of the transaction that triggered the filing of an EWR and the plans or future intentions of the acquiror or a joint actor which relate to certain enumerated actions including, but not limited to, the acquisition or disposition of additional securities, a corporate transaction, a change in the board of directors or management, or a solicitation of proxies. However, we have found that: (i) disclosure regarding acquirors' plans or future intentions in EWRs often consists of broad, boilerplate language; (ii) acquirors often rely on such broad language as a basis for not filing updated EWRs when there have been more particular changes to their intentions, or when they have taken specific actions; and (iii) it is market practice for acquirors to file updated EWRs only upon entering into a definitive agreement in respect of the issuer or its securities.

We have proposed guidance in section 3.3 of NP 62-203 to clarify our expectations regarding disclosure of the plans or future intentions of an acquiror or a joint actor, including that:

- an acquiror should re-assess the accuracy of the disclosure in its most recent EWR in respect of the plans or future intentions of the acquiror and any joint actor every time that the requirement to file an EWR is triggered;

- although the CSA generally considers that a change in plans or future intentions will occur at the latest upon the execution of a definitive agreement to enter into a transaction, the commencement of a take-over bid, or the public announcement of a proxy solicitation, as applicable, an acquiror should update the disclosure in its most recent EWR as soon as a change in plans or future intentions occurs or if the acquiror or any joint actor has taken irrevocable steps to effect a potential transaction, even if the acquiror's most recent EWR contains general language reserving the right to take any of the actions enumerated in Item 5 of Form 62-103F1 *Required Disclosure Under the Early Warning Requirements* (**Form 62-103F1**); and

- significant steps by an acquiror or any joint actor with respect to a particular transaction or event may, individually or taken together, constitute a change in the plans or future intentions disclosed in the acquiror's most recent EWR.

4. Early Warning Reporting Triggers and Thresholds

We have proposed targeted amendments to the early warning system to clarify existing requirements and address potential gaps. We have also proposed additional guidance to NP 62-203 to aid market participants in understanding their reporting obligations. Specifically, the Proposed Amendments and the Proposed Changes:

- specify that an EWR is required to be filed by a person who had beneficial ownership of, or control or direction over, 10% or more of the outstanding voting or equity securities of a class prior to, and immediately following, an issuer becoming a reporting issuer;

- address a gap in NI 62-104 such that an acquisition or disposition of beneficial ownership of, or control or direction over, securities of a class following the formation or cessation of a joint actor relationship is no longer required for a reporting obligation to arise under the early warning system;

- clarify the trigger for the filing of subsequent reports under both the early warning system and the alternative monthly reporting system (**AMR system**) in various contexts, including following an issuer action and during the pendency of a non-exempt take-over bid or issuer bid;

- permit an eligible institutional investor (an **EII**) that is not filing alternative monthly reports (**AMR**) under the AMR system to enter or re-enter the AMR system; and

- clarify how the early warning reporting thresholds are to be calculated.

(a) Deemed Acquisitions – Securities of a Previously Non-Reporting Issuer

EWRs and associated news releases typically are not issued and filed, as applicable, by persons who have beneficial ownership of, or control or direction over, 10% or more of the outstanding voting or equity securities of a class immediately upon an issuer becoming a reporting issuer. In general, stakeholders have interpreted that these EWR filings are not required on the basis that an existing security holder has not acquired beneficial ownership of, or control or direction over, voting or equity securities solely as a result of an issuer becoming a reporting issuer.

We do not believe that initial disclosure of a 10% or greater ownership position in a filing statement, prospectus, or information circular is an adequate substitute for the more complete information mandated under the early warning requirements. In addition, the requirement in subsection 5.2(2) of NI 62-104 to update early warning filings is premised upon the prior filing of an initial report. This current drafting may enable securityholders to avoid disclosure of dispositions of securities, or changes in a material fact regarding their investment intentions, on the basis that they do not have an initial EWR that requires updating. Accordingly, we have proposed adding subsection 5.1(3) to NI 62-104 to deem securities beneficially owned, or over which control or direction is exercised, by a person at the time that an issuer becomes a reporting issuer to have been acquired by the person at that time for the purposes of Part 5 of NI 62-104.

However, we are of the view that requiring the issuance and filing of a news release in connection with this deemed acquisition would increase regulatory burden without providing a corresponding benefit to the market. We also do not believe that the imposition of the moratorium provisions is warranted in such circumstances. Accordingly, we have proposed adding subsections 5.2(5) and 5.3(3) to NI 62-104 to clarify that the news release requirement and moratorium provisions, respectively, do not apply in these circumstances.

(b) Deemed Acquisitions – Securities of Joint Actors

In a recent securities regulatory decision,[17] a British Columbia Securities Commission panel noted that, if parties are acting jointly or in concert, the early warning requirements are triggered only when, as a result of a subsequent acquisition by one of the joint actors, the joint actors collectively hold 10% or more of the outstanding voting or equity securities of any class (*i.e.*, no filing is required upon the formation of a joint actor relationship among persons who would, together with the other joint actors, have beneficial ownership of, or control or direction over, 10% or more of the class as long as each joint actor is below the 10% threshold on an individual basis).

One of the policy rationales for the early warning system is to alert the market of the identity of holders of 10% or more of a class of an issuer's outstanding voting or equity securities because such information may be material information to investors given the potential that such persons can affect the outcome of control transactions, the composition of the reporting issuer's board of directors, and the approval of significant proposals and transactions. We believe that policy purpose is equally engaged when 2 or more securityholders who are acting jointly or in concert collectively hold 10% or more of a class of an issuer's outstanding voting or equity securities even where each is individually below the 10% threshold. Accordingly, we have proposed adding subsection 5.1(4) to NI 62-104 to deem each person acting jointly or in concert with other persons in respect of an issuer to have acquired the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by such other persons when they began acting jointly or in concert with each other. We have also proposed adding subsection 5.1(5) to NI 62-104 to deem each person that ceases acting jointly or in concert with other persons in respect of an issuer to have disposed of the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by such other persons when they cease acting jointly or in concert with each other.

Subsections 5.1(4) and (5) of NI 62-104 only apply to Part 5 of NI 62-104. It is not intended that the crystallization of a joint actor relationship where the joint actors collectively own or control 20% or more of the outstanding securities of the class would constitute a take-over bid in the absence of a subsequent acquisition by one or more of the joint actors.

(c) Trigger for Subsequent Filings

We have proposed amendments to certain provisions in NI 62-103 and NI 62-104 and guidance in NP 62-203 related to the trigger for subsequent filings under the early warning system and the AMR system. In particular, we have proposed:

- amending paragraph 5.2(2)(a) of NI 62-104 and adding the defined term "securityholding percentage" to subsection 5.1(1) of NI 62-104 to clarify that the requirement to file a subsequent EWR is to be assessed on the basis of a 2% or more change in the acquiror's post-event percentage ownership of the outstanding securities of the particular class relative to the percentage ownership that the acquiror reported in its most recent EWR;

[17] *Re NorthWest Copper Corp*, 2023 BCSECCOM 602.

- amending paragraph 4.5(c) of NI 62-103 and adding guidance in section 3.8 of NP 62-203 to clarify that EIIs are required to file an AMR upon crossing fixed 2.5% thresholds in excess of 10% (*e.g.*, 12.5%, 15%, 17.5%, etc.);[18]

- guidance in section 3.9 of NP 62-203, including illustrative examples, to clarify the issuer actions exemption in section 6.1 of NI 62-103; and

- guidance in section 3.4 of NP 62-203 to clarify that EIIs that are exempt from the early warning requirements under section 4.1 of NI 62-103 are not exempt from the requirement to issue and file a news release under section 5.4 of NI 62-104 in connection with acquisitions during a non-exempt take-over bid or issuer bid.

(d) Entry or Re-Entry into the AMR System

We have received inquiries regarding whether EIIs that become disqualified from the AMR system pursuant to section 4.2 of NI 62-103 are able to rely on the AMR system once the circumstances surrounding the disqualification (*i.e.*, the formal bid, the business combination, or the proxy solicitation) have ended, ceased, or are no longer present, and how they would go about re-entering the AMR system. We have proposed adding subsection 4.3(5) to NI 62-103 to permit an EII that is not filing reports under the AMR system to enter or re-enter the AMR system, provided that the EII promptly issues and files a news release that includes a statement that the EII is eligible to file reports under the AMR system and that it intends to do so for the reporting issuer, and subsequently files a report in accordance with paragraph 4.5(a) of NI 62-103.

(e) Early Warning Reporting Calculations

We have received inquiries in respect of how the early warning reporting thresholds are to be calculated and, in particular, whether the acquisition of beneficial ownership of, or control or direction over, securities convertible into voting or equity securities of a reporting issuer that are not convertible within 60 days from the date on which they are acquired need to be included as part of the numerator when determining whether the early warning requirements have been triggered. We have proposed guidance in sections 3.6 and 3.7 of NP 62-203, including illustrative examples, to clarify these calculations.

5. Amending Exemptions and Codifying Common Discretionary Exemptions

We have proposed amendments that relate to exemptions from the take-over bid and issuer bid regimes, including to:

- remove the exemption from the take-over bid requirements in subsection 2.2(3) of NI 62-104 that permits offerors to make market purchases of up to 5% of the outstanding securities of the class subject to the take-over bid during the pendency of the bid (the **5% Market Purchase Exemption**);

[18] In *Kingsway Financial Services Inc v Kobex Capital Corp*, 2016 BCSC 460, the British Columbia Supreme Court held that paragraph 4.5(c) of NI 62-103 requires an EII to report securityholding increases or decreases of 2.5% relative to their previous report, and that it does not set up fixed tiers of 12.5%, 15%, 17.5%, 20%, etc.

- expand the availability of exemptions from the take-over bid and issuer bid regimes in respect of non-reporting issuers;

- allow issuers to extend "Dutch auction" issuer bids without first taking up securities if certain conditions are satisfied;

- facilitate issuer bids that provide securityholders with the option to maintain their proportionate interest in the issuer following completion of the bid; and

- allow issuers to repurchase, redeem, or otherwise acquire securities that are convertible into securities of the class subject to an issuer bid in reliance on paragraph 4.6(a), (b), or (c) of NI 62-104.

(a) Removing the 5% Market Purchase Exemption

The policy basis for the 5% Market Purchase Exemption is to promote liquidity in the target issuer's securities, provide all target securityholders with an equal opportunity to sell their securities in the target issuer prior to the conclusion of the take-over bid, raise the market price of the securities, and encourage bidders to raise their offer prices.[19] However, the 5% Market Purchase Exemption has been criticized for being of limited merit and having the potential to be utilized abusively by bidders to thwart competing bids, particularly after the amendments to the take-over bid regime made in 2016.

The take-over bid regime includes a non-waivable 50% minimum tender requirement, which calculation excludes the securities of the target issuer held by the bidder and its joint actors (including any securities of the target issuer acquired pursuant to the 5% Market Purchase Exemption). Accordingly, purchases of the target issuer's securities pursuant to the 5% Market Purchase Exemption do not assist a bidder in satisfying the minimum tender requirement. Moreover, the 5% Market Purchase Exemption could potentially be used tactically by bidders to limit the number of securities available on the market for a competing bidder and thwart a competing bid that would also be subject to the 50% minimum tender requirement.

We have received feedback that liquidity seldom seems to be a concern during the pendency of a take-over bid, and that the market price of a target issuer's securities is more likely to be driven by the market's assessment of the prospects for the success or failure of the bid or the potential for a friendly acquiror to emerge. Additionally, for the period between January 1, 2021 and December 31, 2023, we only identified one instance where a bidder issued and filed news releases relating to use of the 5% Market Purchase Exemption.

Given the potential for the 5% Market Purchase Exemption to be used in a manner that frustrates an open take-over bid process, and in light of its infrequent use, we do not believe that there is a compelling policy basis to retain the 5% Market Purchase Exemption and have proposed removing it.

[19] *Re Falconbridge Ltd* (2006), 29 OSCB 6783 at para 73.

(b) The Non-Reporting Issuer Exemptions from the Take-Over Bid and Issuer Bid Requirements

Section 4.3 of NI 62-104 (the **NRI TOB Exemption**) provides an exemption from the take-over bid requirements where: (i) the target issuer is not a reporting issuer; (ii) there is no published market for the target issuer's securities; and (iii) the target issuer has 50 or fewer securityholders, exclusive of current or former employees of the target issuer or one of its affiliates (the **Maximum Securityholder Condition**, and such employees, the **Qualifying Persons**). The policy rationale for the NRI TOB Exemption is that the cost of complying with the take-over bid requirements outweighs the benefits where the bid is made for a private company with relatively few securityholders, particularly given that private companies often have security transfer restrictions that prevent the types of concerns that are addressed by take-over bid regulation, and because private company securityholders can be expected to have access to the kind of information that would be provided in a bid circular. There is a corresponding exemption from the issuer bid requirements for non-reporting issuers in section 4.9 of NI 62-104 (the **NRI Issuer Bid Exemption**).

From time to time, we have received applications for exemptive relief, primarily from bidders seeking relief from the take-over bid requirements but also from issuers seeking relief from the issuer bid requirements, in circumstances where the subject issuer does not satisfy the Maximum Securityholder Condition. Relief has been granted in circumstances where the facts support the subject issuer being a closely-held, non-reporting issuer despite not being able to satisfy the Maximum Securityholder Condition, but generally only when the subject issuer exceeds the Maximum Securityholder Condition by fewer than 5 additional beneficial securityholders after allowing for certain additional categories of persons to be excluded for the purposes of calculating the Maximum Securityholder Condition. These additional categories have consisted of persons considered by the CSA to be in a similar position to employees and who have been viewed as akin to employees in other contexts,[20] such as officers, directors, contractors, and consultants (collectively, the **Employee Adjacent Persons**), and also to spouses of Qualifying Persons or Employee Adjacent Persons where the Qualifying Person or Employee Adjacent Person has control or direction over the subject issuer's securities that are beneficially owned by the spouse. We have proposed amending the NRI TOB Exemption and the NRI Issuer Bid Exemption to codify these additional categories.

(c) Modified Dutch Auction Issuer Bids – Extension Take Up Requirement

Some issuer bids are conducted pursuant to a modified "Dutch auction" process where, generally, the issuer sets a maximum dollar amount of its own securities that it wishes to repurchase (the **Bid Amount**) and a range of prices within which securityholders may elect to tender their securities. The issuer will determine a single purchase price payable per security (the **Determined Purchase Price**) at which tendered securities will be taken up, taking into account the number of securities tendered and the prices at which securityholders have elected to tender their securities. The Determined Purchase Price will be the lowest price per security that allows the issuer to purchase

[20] See section 2.24 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**), which provides that the prospectus requirement does not apply to a distribution by an issuer with an employee, executive officer, director or consultant of the issuer.

the greatest number of securities validly tendered and not withdrawn having an aggregate value not exceeding the Bid Amount.

Subsection 2.32(4) of NI 62-104 (the **Extension Take Up Requirement**) provides that an issuer must not extend its issuer bid if all the terms and conditions of the bid have been complied with or waived, unless the issuer first takes up all securities deposited under the bid and not withdrawn. The Extension Take Up Requirement serves to ensure that, if a bid is made and the terms and conditions of the bid are satisfied or waived, securityholders can expect that the securities that they have deposited will be taken up and paid for. However, the mechanics of modified "Dutch auction" issuer bids render compliance with the Extension Take Up Requirement problematic, as securities tendered during any extension period and the prices at which they are tendered will influence the Determined Purchase Price and the proportion of tendered securities that will be purchased.

We have granted relief from the Extension Take Up Requirement to accommodate the mechanics of modified "Dutch auction" issuer bids when issuers have applied for such relief, and have proposed adding subsection 2.32(4.1) to NI 62-104 to codify this exemption. The exemption would result in securityholders who initially tendered to the bid having to wait until the expiry of the extension period for their securities to be taken up and paid for. There are circumstances where we do not believe that it is appropriate for securityholders to be prejudiced by this delay in take up and payment, such as when: (i) the bid is not undersubscribed, as any extension would only serve to result in fewer securities of a tendering securityholder (on a proportionate basis) being taken up and lowering the Determined Purchase Price; or (ii) the market price of the securities is greater than the highest price per security offered by the issuer, as there would be no reasonable prospect that the issuer should receive more tenders. We have proposed adding paragraphs (b) and (c), respectively, to subsection 2.32(4.1) to address these issues.

(d) Issuer Bids – Proportionate Tenders

Subsection 2.26(1) of NI 62-104 (the **Proportionate Take Up Requirement**) provides that, if an issuer bid is made for less than all of the class of securities subject to the bid and a greater number of securities are deposited than the issuer has sought to acquire, the issuer must take up and pay for the securities proportionately, according to the number of securities deposited by each securityholder.

Some modified "Dutch auction" issuer bids have included a proportionate tender option whereby securityholders can elect to sell to the issuer, at the Determined Purchase Price, a number of securities that will result in the securityholder maintaining their proportionate interest in the issuer following completion of the bid (a **Proportionate Tender**). However, unless all outstanding securities are tendered to the bid, fewer than the proportionate number of securities tendered through a Proportionate Tender will be taken up and paid for, and accordingly, absent exemptive relief, the inclusion of a Proportionate Tender option is not permissible.[21]

[21] An exemption from the Proportionate Take Up Requirement already exists in subsection 2.26(3) of NI 62-104 for modified "Dutch auction" issuer bids, however, that exemption relates to the return of securities tendered at prices in excess of the Determined Purchase Price and would not apply to a Proportionate Tender.

The purpose of the Proportionate Take Up Requirement is to ensure that all tendering securityholders are treated equally. If an issuer conducting an issuer bid chooses to allow securityholders to make a Proportionate Tender, such an option would have to be made available to every securityholder, thereby eliminating concerns related to equal treatment. Accordingly, we have proposed adding subsection (3.1) to section 2.26 of NI 62-104 to codify the exemptive relief that we have been granting to facilitate Proportionate Tenders. We do not see a basis to limit the ability to elect to make a Proportionate Tender to modified "Dutch auction" issuer bids, so have not drafted the exemption on that basis.

(e) Issuer Bids – Acquisition of Convertible Securities during an Issuer Bid

Subsection 2.3(1) of NI 62-104 prohibits an issuer from acquiring, or making or entering into an agreement, commitment or understanding to acquire, beneficial ownership of securities of the class that are subject to an issuer bid, or securities that are convertible into securities of that class, otherwise than under the bid. Subsection 2.3(2) of NI 62-104 provides that an issuer is not prevented from purchasing, redeeming, or otherwise acquiring any securities of the class subject to the bid in reliance on an exemption in paragraph 4.6(a), (b), or (c) of NI 62-104. However, subsection 2.3(2) does not permit an issuer to purchase, redeem, or otherwise acquire securities that are convertible into securities of the class subject to the bid in reliance on an exemption in paragraph 4.6(a), (b), or (c). We believe that it is appropriate for issuers to be able to repurchase, redeem, or otherwise acquire securities that are convertible into securities of the class subject to the bid, as well as securities of the class subject to the bid, in reliance on paragraph 4.6(a), (b), or (c), and have proposed amending subsection 2.3(2) of NI 62-104 to expand the exemption accordingly.

6. Miscellaneous

(a) Settlement Period

On May 27, 2024, the settlement period for securities trades in Canada moved from a transaction date plus 2 business day settlement cycle to a transaction date plus one business day settlement cycle. The settlement cycle and take-over bid and issuer bid tendering process payment periods historically have not been linked. We had been advised that it generally takes up to 3 days for an offeror's designated depositary to coordinate payment to registered holders whose securities are taken up after it receives the necessary funds from the offeror. However, we are in favour of securityholders receiving payment for their taken up securities on a more timely basis, if practicable. Accordingly, we have proposed amending paragraph 2.30(1)(c), subparagraph 2.31.1(b)(iv), and subsections 2.32(2) and 2.32.1(2) of NI 62-104 to replace references to "3 business days" with "promptly", and proposed guidance in section 2.19 of NP 62-203 to clarify our view that "promptly" should be interpreted on the basis of the practices of the financial community, including settlement practices, applicable at the relevant time.

(b) Guidance

We have proposed guidance in NP 62-203 with respect to various issues about which we have frequently received inquiries or that address market developments, including:

- in section 2.4.1, to clarify that conditions to take-over bids may engage securities regulatory authorities' public interest jurisdiction in certain circumstances;

- in section 2.18, to clarify that certain policies underlying the take-over bid regime are also applicable in the context of a mini-tender offer, and describe circumstances when securities regulators may intervene in respect of a mini-tender offer;

- in section 2.20, to explain how the "date of the bid" is to be determined for purposes of certain exemptions from the take-over bid and issuer bid requirements;

- in section 2.21, to clarify that we retain public interest jurisdiction over offshore repurchases of securities; and

- in section 3.5, to clarify that the concept of acting jointly or in concert applies to proxy solicitation for the purpose of voting on an alternative slate of directors, even in the absence of a take-over bid or issuer bid.

D. Consequential Amendments and Consequential Changes

The Consequential Amendments amend the references to NI 62-104 in each of MI 13-102, NI 43-101, NI 44-102, MI 51-105, and MI 61-101 to reflect the proposed amendment to the title of NI 62-104. The Consequential Changes change the references to NI 62-104 in each of 55-104CP and 61-101CP to reflect the proposed amendment to the title of NI 62-104.

E. Local Matters

Annex M is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

F. Request for Comments

We welcome your comments on the Proposed Amendments and the Proposed Changes. In addition to any general comments you may have, we also invite comments on the following specific questions.

Selective Repurchase Exemption

1. One of the conditions of the Selective Repurchase Exemption is that the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within any period of 12 months in reliance on the Selective Repurchase Exemption does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period. Please comment on the appropriateness of this condition. If you are of the view that a different threshold would be more appropriate, please explain why.

2. One of the conditions of the Selective Repurchase Exemption is that securities must be acquired from not more than 5 persons in the aggregate and in not more than 5 transactions

in the aggregate, within any period of 12 months. Please comment on the appropriateness of this condition. If you are of the view that a different threshold would be more appropriate, please explain why.

3. One of the conditions of the Selective Repurchase Exemption is that a liquid market in the class of securities that is the subject of the bid exists at the date of the bid, determined in accordance with proposed section 1.12 of NI 62-104, which is derived from section 1.2 of MI 61-101. Section 1.12 includes, among other things, a requirement that the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15,000,000 and that the market value of the class of securities on the published market on which the class was principally traded was at least $75,000,000. Based on available data, approximately 75% of issuers listed on the Toronto Stock Exchange and less than 10% of issuers listed on the TSX Venture Exchange would satisfy the liquid market criteria. Does proposed section 1.12 of NI 62-104 strike an appropriate balance between ensuring that there is sufficient liquidity to enable securityholders who do not participate in the bid to dispose of their securities in the market without unduly limiting the availability of the Selective Repurchase Exemption? If not, what criteria and/or thresholds would be more appropriate?

4. Should the news release that the issuer is required to issue and file following the making of the bid include any additional information, and if so, what?

5. Is it appropriate for the value of the consideration paid by the issuer for any securities repurchased to be determined with reference to an unaffected closing price, or should the consideration be determined on the basis of the closing price of the class of subject securities following an announcement of the bid?

6. Do you agree that purchases made in reliance on the Selective Repurchase Exemption should not reduce the maximum number of securities that an issuer may acquire in reliance on the NCIB Exemption?

7. Do you expect that the Selective Repurchase Exemption will: (a) curtail repurchases by issuers pursuant to formal issuer bids or NCIBs; or (b) have any negative impact on liquidity in the relevant class of securities?

8. Should the availability of the Selective Repurchase Exemption be limited to issuers with operative NCIBs? If so, should such issuers have repurchased a minimum number of securities under such NCIBs as at the date of the bid? If so, what minimum amount of repurchases would be appropriate and why?

9. Are there foreseeable challenges, practical or otherwise, for issuers who may wish to rely on the Selective Repurchase Exemption? If so, please also explain whether and how they may be addressed or mitigated.

10. Are there foreseeable unintended consequences of the Selective Repurchase Exemption or ways in which the Selective Repurchase Exemption could be misused?

11. Do you think that the Selective Repurchase Exemption may give rise to concerns related to "greenmail"?[22] If so, do you think that the 5% repurchase limit helps to mitigate such concerns?

Equity Equivalent Derivatives

12. Do you agree with the proposed "equity equivalent derivative" concept, as set out in the definition and its associated guidance? If not, what changes would you suggest?

13. Do you agree with the proposal to require disclosure of equity equivalent derivatives during a take-over bid and proxy solicitation for which an information circular is required? Why or why not?

14. Would the proposed new disclosure requirements referenced in question 13 have unintended consequences, such as impacting the number or quality of take-over bids or proxy solicitation campaigns?

15. While the proposed new disclosure requirements referenced in question 13 would not be triggered until a person or company is required to prepare and send a take-over bid or information circular, prospective bidders or activists may enter into equity equivalent derivative transactions prior to that time. Should a person or company soliciting proxies in reliance on the public broadcast, speech, or publication exemption in subsection 9.2(4) of NI 51-102 be required to provide the disclosure contemplated by proposed new Items 6.7 and 6.8 of Form 51-102F5?

16. Given that Item 7 of Form 62-104F1 requires that a take-over bid circular include disclosure about any securities of the offeree issuer purchased or sold by certain persons during the 6-month period preceding the date of the take-over bid, do you agree with the proposed requirement in Item 8.1 of Form 62-104F1 that a take-over bid circular include disclosure about related financial instruments and other agreements, arrangements or understandings that have or had the effect of altering economic exposure to the offeree issuer during the 6-month period preceding the date of the bid? Why or why not?

Early Warning Reporting Triggers

17. Subsection 5.1(3) of NI 62-104 would deem securities beneficially owned, or over which control or direction is exercised, by a person at the time that an issuer becomes a reporting issuer to have been acquired by the person at that time for the purposes of Part 5 of NI 62-104. Please comment on the appropriateness and potential impact of this proposed provision.

18. Subsection 5.1(4) of NI 62-104 would deem each person acting jointly or in concert with other persons in respect of an issuer to have acquired the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by such other persons when they began acting jointly or in concert with each other. Relatedly, subsection 5.1(5)

[22] "Greenmail" refers to a situation where a securityholder threatens to take an action, such as commencing a take-over bid or seeking to replace the issuer's board of directors or management, unless the issuer agrees to repurchase its securities from the securityholder.

would deem each person that ceases acting jointly or in concert with other persons in respect of an issuer to have disposed of the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by such other persons when they ceased acting jointly or in concert with each other. Please comment on the appropriateness of these proposed provisions and any foreseeable concerns with its interpretation and/or enforceability.

Non-Reporting Issuer Exemptions from the Take-Over Bid and Issuer Bid Requirements

19. Are there any other categories of persons that should be excluded for the purposes of calculating the Maximum Securityholder Condition?

20. After the inclusion of the additional categories proposed, should the Maximum Securityholder Condition be further increased beyond 50? If so, what should it be increased to and why?

Settlement Period

21. Should the tendering process payment period be changed from a maximum of 3 business days to a maximum of one business day to align with the settlement cycle for securities trades?

22. Are there any practical impediments or challenges to shortening the tendering process payment period from the current 3 business day maximum? If so, please explain.

G. Submitting Comments

Please submit your comments in writing on or before August 12, 2026.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Submit your comments here: https://www.securities-administrators.ca/consultations/. Your comments will be distributed to the participating CSA members.

If Québec is a participating jurisdiction, and you are submitting your comments through the link above, you are also submitting your comments to:

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour PwC
2640, boulevard Laurier, bureau 400
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Email: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. Comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

H. Contents of Annexes

Annex A Proposed Amendments to NI 62-104

Annex B Proposed Amendments to NI 62-103

Annex C Proposed Amendments to NI 51-102

Annex D Proposed Changes to NP 62-203

Annex E Proposed Changes to 51-102CP

Annex F Proposed Amendments to MI 13-102

Annex G Proposed Amendments to NI 43-101

Annex H Proposed Amendments to NI 44-102

Annex I Proposed Amendments to MI 51-105

Annex J Proposed Amendments to MI 61-101

Annex K Proposed Changes to 55-104CP

Annex L Proposed Changes to 61-101CP

I. Questions

Please refer your questions to any of the following:

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Autorité des marchés financiers

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ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 62-104 *TAKE-OVER BIDS AND ISSUER BIDS*

1. National Instrument 62-104 Take-Over Bids and Issuer Bids is amended by this Instrument.

2. The title of the Instrument is replaced with the following:

National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System.*

3. Section 1.1 is amended by adding the following definitions:

"derivative" has the same meaning as in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;***;***

"economic exposure" has the same meaning as in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;***;***

"economic interest" has the same meaning as in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;***;***

"equity equivalent derivative" means one or more derivatives, that are referenced to, or derived from, a voting or equity security of an issuer and which provide the holder, directly or indirectly, with an economic interest that is substantially equivalent to the economic interest associated with beneficial ownership of the security;***;***

"freely tradeable" has the same meaning as in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*;***;***

"related financial instrument" has the same meaning as in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;***;***

"related party" has the same meaning as in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*;**.**

4. The following section is added before Part 2:

Determination of the existence of a liquid market

1.12 (1) For the purposes of paragraph 4.6.1(1)(c), a liquid market in a class of securities of an issuer exists at the date of an issuer bid only if all of the following conditions are satisfied:

(a) there is a published market for the class of securities;

(b) during the period of 12 months before the date of the issuer bid,

(i) the number of outstanding securities of the class was at all times at least 5 000 000, excluding securities beneficially owned, or over which control or direction was exercised, by related parties of the issuer and securities that were not freely tradeable,

(ii) the aggregate trading volume of the class of securities on the published market on which the class was principally traded was at least 1 000 000 securities,

(iii) there were at least 1000 trades in securities of the class on the published market on which the class was principally traded, and

(iv) the aggregate value of the trades in securities of the class on the published market on which the class was principally traded was at least $15 000 000;

(c) the market value of the class of securities on the published market on which the class was principally traded was at least $75 000 000 for the calendar month preceding the calendar month in which the issuer bid is made, calculated by multiplying the number of securities of the class outstanding as of the close of business on the last business day of the calendar month, excluding securities beneficially owned, or over which control or direction was exercised, by related parties of the issuer and securities that were not freely tradeable, by

(i) the average of the closing prices of the securities of that class on the published market on which that class was principally traded for each of the trading days during the calendar month, if the published market provides a closing price for the securities, or

(ii) the average of the simple averages of the highest and lowest prices of the securities of that class on the published market on which that class was principally traded for each of the trading days for which the securities traded during the calendar month, if the published market does not provide a closing price, but provides only the highest and lowest prices of securities traded on a particular day.

(2) For the purposes of subsection (1), if there is more than one published market for a class of securities, the published market on which the class was principally traded must be determined as follows:

(a) if only one of the published markets is in Canada, the published market on which the class was principally traded is the published market in Canada;

(b) if there is more than one published market in Canada, the published market on which the class was principally traded is the published market in Canada on which the greatest volume of trading in that class occurred during the 20 business days preceding the date of the issuer bid;

(c) if there is no published market in Canada, the published market on which the class was principally traded is the published market on which the greatest volume of trading in that class occurred during the 20 business days preceding the date of the issuer bid.**.**

5. Section 2.2 is amended by repealing subsections (3) and (4).

6. Section 2.3 is amended in subsection (2) by adding ", or securities that are convertible into securities of that class,***" after "***securities of the class subject to the bid***".***

7. The following section is added before Division 2:

Disclosure of changes in economic exposure during take-over bid

2.7.1 (1) If, before the expiry of a take-over bid, an offeror acquires or disposes of an interest in, or right or obligation associated with, a related financial instrument involving voting or equity securities of the offeree issuer, including, for greater certainty, an equity equivalent derivative, or there is a change in an offeror's interest in, or right or obligation associated with, the related financial instrument, the offeror must, before the opening of trading on the business day following the date of the acquisition, disposition or change, issue and file a news release disclosing the following:

(a) the material terms of the related financial instrument and its impact on the offeror's securityholdings in, and economic exposure to, the offeree issuer;

(b) whether the offeror has the ability, formally or informally, to obtain the voting or equity securities or to direct the voting of voting securities held by a counterparty to the related financial instrument;

(c) a description of any past or present relationship between the offeror and a counterparty to the related financial instrument, or an affiliate of the counterparty, including, for greater certainty, the name of the counterparty and, if applicable, the affiliate, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the offeree issuer, or, if there is no such relationship, a statement to that effect.

(2) If, before the expiry of a take-over bid, an offeror enters into, terminates or amends an agreement, arrangement or understanding that has the effect of altering the offeror's economic exposure to the offeree issuer and disclosure is not otherwise required under subsection (1), the offeror must, before the opening of trading on the business day following the date of the entering into, termination or amendment, issue and file a news release disclosing the following:

(a) the material terms of the agreement, arrangement or understanding and its impact on the offeror's economic exposure to the offeree issuer;

(b) a description of any past or present relationship between the offeror and a counterparty to the agreement, arrangement or understanding, or an affiliate of the counterparty, including, for greater certainty, the name of the counterparty and, if applicable, the affiliate, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the offeree issuer, or, if there is no such relationship, a statement to that effect.**.**

8. Section 2.12 is amended in subsection (1) by adding "including, for greater certainty, the mandatory 10-day extension period,***" before "***and whether or not***".***

9. Section 2.26 is amended by adding the following subsection:

(3.1) Subsection (1) does not apply to securities deposited under the terms of an issuer bid by a security holder that

(a) is entitled to elect to sell the number of securities required to be sold so that the proportion of securities of the class owned by the security holder after completion of the bid equals the proportion of securities of that class owned by the security holder before the bid, and

(b) makes the election.**.**

10. Paragraph 2.30(1)(c) is amended by replacing "within 3 business days***" with "***promptly***".***

11. Section 2.31.1 is amended

(a) by deleting "and***" at the end of paragraph (a),***

(b) in clause (b)(iv)(A) by replacing "pay for securities taken up as soon as possible, and in any event not later than 3 business days after the securities are taken up***" with "***pay promptly for securities taken up***",***

(c) in clause (b)(iv)(B) by replacing "pay for securities taken up as soon as possible and in any event not later than 3 business days after the securities are taken up.***" with "***pay promptly for securities taken up, and***", and***

(d) by adding the following paragraph:

(c) send a notice of variation to each holder of securities to whom the bid was required to be sent under section 2.8.**.**

12. Section 2.32 is amended

(a) in subsection (2) by replacing "An offeror must pay***" with "***An offeror must pay promptly***" and deleting "***as soon as possible, and in any event not later than 3 business days after securities deposited under the bid are taken up***", and***

(b) by adding the following subsection:

(4.1) Despite subsection (4), an offeror may extend an issuer bid for which all the terms and conditions have been complied with or waived without first taking up all securities deposited under the bid and not withdrawn if all of the following apply:

(a) the terms of the bid entitle security holders to elect a minimum price per security, within a range of prices, at which they are willing to sell their securities under the bid;

(b) at the time of the extension, the aggregate price payable for the securities deposited under the bid and not withdrawn is less than the maximum aggregate price payable under the bid;

(c) at the time of the extension, the market price of the securities is not greater than the maximum price per security within a range of prices set out in the terms of the bid.**.**

13. Subsection 2.32.1(2) is amended by replacing "An offeror must pay***" with "***An offeror must pay promptly***" and deleting "***as soon as possible, and in any event not later than 3 business days after securities deposited under the bid are taken up***".***

14. Section 4.3 is amended by replacing paragraph (c) with the following:

(c) the number of security holders of that class of securities at the date of the bid is not more than 50, excluding any holder that is, at the date of the bid

(i) an employee, officer, director or consultant of the offeree issuer or an affiliate of the offeree issuer,

(ii) a former employee, officer, director or consultant of the offeree issuer that, while in that relationship, was, and has continued after the end of that relationship to be, a security holder of the offeree issuer,

(iii) a former employee, officer, director or consultant of an affiliate of the offeree issuer that, while in that relationship, was, and has continued after the end of that relationship to be, a security holder of the offeree issuer, or

(iv) a spouse of a person referred to in subparagraph (i), (ii) or (iii) where the person has control or direction over the securities of the offeree issuer beneficially owned by the spouse**.**

15. The following section is added after section 4.6:

Selective repurchase exemption

4.6.1 (1) An issuer bid for a class of securities is exempt from Part 2 if all of the following conditions are satisfied:

(a) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer in reliance on this exemption during the 12 months immediately preceding the date of the bid does not exceed 5% of the securities of that class outstanding at the beginning of the 12-month period;

(b) the securities acquired by the issuer in reliance on this exemption during the 12 months immediately preceding the date of the bid are acquired from not more than 5 persons in the aggregate and in not more than 5 transactions in the aggregate;

(c) a liquid market in the class of securities that is the subject of the bid exists at the date of the bid, determined in accordance with section 1.12;

(d) the bid is made outside of the regular trading hours of the market on which the class of securities that is the subject of the bid is principally traded, determined in accordance with subsection 1.12(2);

(e) the value of the consideration paid by the issuer for any of the securities acquired in reliance on this exemption, including brokerage fees or commissions, is less than the closing price of the class of securities that is the subject of the bid on the market on which the class is principally traded, determined in accordance with subsection 1.12(2), at the date of the bid;

(f) the board of directors of the issuer has determined that

(i) following the completion of the bid, the market for the class of securities that is the subject of the bid would not reasonably be expected to be materially less liquid than the market that existed at the date of the bid, and

(ii) the bid would not reasonably be expected to have a significant negative effect on the market price or value of the class of securities that is the subject of the bid;

(g) neither the issuer nor, to the knowledge of the issuer after reasonable inquiry, the selling security holder has knowledge of any material fact or material change in respect of the issuer or its securities that has not been generally disclosed at the date of the bid;

(h) the issuer issues and files, after making the bid and before the opening of trading of the market on which the class of securities that is the subject of the bid is principally traded, determined in accordance with subsection 1.12(2), a news release disclosing the following information:

(i) the name of the selling security holder;

(ii) the number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer;

(iii) the value of the consideration paid by the issuer for the securities per security and in total;

(iv) the market price of the class of securities at the date of the bid;

(v) the aggregate number of securities or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within the preceding 12-month period in reliance on this exemption.

(2) In subsection (1), if an issuer makes an offer to acquire securities from a person and the issuer knows or ought to know after reasonable enquiry that

(a) the person acquired the securities in order that the issuer might make use of the exemption under subsection (1), then each person from whom those securities were acquired must be counted as one person in the determination of the number of persons to whom an offer to acquire has been made, or

(b) the person from whom the acquisition is being made is acting as a nominee, agent, trustee, executor, administrator or other legal representative for one or more other persons having a direct beneficial interest in those securities, then each of those other persons must be counted as one person in the determination of the number of persons to whom an offer to acquire has been made.

(3) Despite paragraph (2)(b), a trust or estate is to be considered a single security holder in the determination of the number of persons to whom an offer to acquire has been made if

(a) an inter vivos trust has been established by a single settlor, or

(b) an estate has not vested in all persons who are beneficially entitled to it**.**

16. Section 4.7 is amended by replacing "executive officer***" with "***officer***".***

17. Section 4.8 is amended by replacing subsection (1) with the following:

(1) In this section, "**designated exchange**" means the Toronto Stock Exchange, the TSX Venture Exchange, Cboe Canada Inc., CNSX Markets Inc. or other exchange recognized or designated by the securities regulatory authorities for the purpose of this Instrument**.**

18. Section 4.9 is amended by replacing paragraph (c) with the following:

(c) the number of security holders of that class of securities at the date of the bid is not more than 50, excluding any holder that is, at the date of the bid

(i) an employee, officer, director or consultant of the issuer or an affiliate of the issuer,

(ii) a former employee, officer, director or consultant of the issuer that, while in that relationship, was, and has continued after the end of that relationship to be, a security holder of the issuer,

(iii) a former employee, officer, director or consultant of an affiliate of the issuer that, while in that relationship, was, and has continued after the end of that relationship to be, a security holder of the issuer, or

(iv) a spouse of a person referred to in subparagraph (i), (ii) or (iii) where the person has control or direction over the securities of the issuer beneficially owned by the spouse**.**

19. Section 5.1 is amended

(a) in subsection (1) by adding the following definitions:

"securityholding percentage" means a person's beneficial ownership of, or control or direction over, a class of voting or equity securities of a reporting issuer, or securities convertible into the class of voting or equity securities, expressed as a percentage of the outstanding securities of the class, calculated in accordance with applicable securities legislation listed in Appendix D of NI 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*;

"solicit" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*.**, *and***

(b) by adding the following subsections:

(3) For the purposes of this Part, securities beneficially owned, or over which control or direction is exercised, by a person at the time that an issuer becomes a reporting issuer are deemed to have been acquired by the person at that time.

(4) For the purposes of this Part, a person acting jointly or in concert with one or more other persons in respect of an issuer is deemed to have acquired the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by the other person or persons when the first mentioned person began acting jointly or in concert with that other person or those other persons.

(5) For the purposes of this Part, a person that ceases acting jointly or in concert with one or more other persons in respect of an issuer is deemed to have disposed of the securities of the issuer that are beneficially owned, or over which control or direction is exercised, by the other person or persons at the time the first mentioned person ceases acting jointly or in concert with that other person or those other persons.

(6) For the purposes of determining control or direction over securities of an issuer under sections 5.2 and 5.4, an acquiror or person acting jointly or in concert with the acquiror has acquired, and has, control or direction over a security, including an unissued security, if the acquiror or person is a counterparty to an equity equivalent derivative of the security during the period that

(a) begins on the date that the acquiror or person commences a solicitation under paragraph 9.1(2)(b) of National Instrument 51-102 *Continuous Disclosure Obligations*, and

(b) ends on the later of the following:

(i) the date on which the meeting in respect of the solicitation is held;

(ii) the date on which the acquiror or person issues and files a news release stating that the solicitation has ceased**.**

20. Section 5.2 is amended

(a) by replacing subsection (2) with the following:

(2) An acquiror that is required to file a report under paragraph (1)(b) must issue and file a news release and file another report, in accordance with paragraphs (1)(a) and (b), each time any of the following apply:

(a) the acquiror, or any person acting jointly or in concert with the acquiror, acquires or disposes of beneficial ownership of, or acquires or ceases to have control or direction over, either of the following:

(i) securities in an amount that results in an increase or a decrease in the securityholding percentage of the acquiror of 2% or more than the securityholding percentage reported in the most recent report required to be filed by the acquiror under subsection (1) or this subsection;

(ii) securities convertible into the class of securities that was the subject of the most recent report required to be filed by the acquiror under subsection (1) or this subsection that results in an increase or a decrease of 2% or more than the securityholding percentage reported by the acquiror in that report;

(b) there is a change in a material fact contained in the most recent report required to be filed under paragraph (1)(b) or paragraph (a) of this subsection.**,**

(b) by replacing subsection (3) with the following:

(3) An acquiror must issue and file a news release and file a report, in accordance with paragraphs (1)(a) and (b), if the acquiror's securityholding percentage, as reported in the most recent report required to be filed by the acquiror under this section, decreases to less than 10%.***, and***

(c) by adding the following subsection:

(5) Paragraph (1)(a) does not apply to an acquiror in respect of a deemed acquisition of securities under subsection 5.1(3)**.**

21. Section 5.3 is amended by adding the following subsection:

(3) Subsection (1) does not apply to an acquiror in respect of a deemed acquisition of securities under subsection 5.1(3)**.**

22. Section 5.4 is amended

(a) by replacing subsection (2) with the following:

(2) An acquiror must issue and file a news release containing the information required under subsection (3) before the opening of trading on the next business day each time the acquiror, or any person acting jointly or in concert with the acquiror, acquires beneficial ownership of, or control or direction over, in aggregate, securities of the class subject to the bid that results in a change in the securityholding percentage of the acquiror of 2% or more than the securityholding percentage reported in the most recent news release required to be filed by the acquiror under this section.***, and***

(b) in paragraph (e) of subsection (3) by replacing "market in***" with "***market on***".***

23. Form 62-104F1 Take-Over Bid Circular is amended

(a) in Part 1 in paragraph (a) by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids*" ***with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System*"***, and***

(b) by adding the following item:

Item 8.1. Interests affecting economic exposure

(1) If the offeror, or any person acting jointly or in concert with the offeror, has, or had at any time during the 6-month period preceding the date of the take-over bid, an interest in, or right or obligation associated with, a related financial instrument involving a voting or equity security of the offeree issuer, including, for greater certainty, an equity equivalent derivative, disclose the following:

(a) the material terms of the related financial instrument and its impact on the offeror's or person's securityholdings in, and economic exposure to, the offeree issuer;

(b) the date the interest in, or the right or obligation associated with, the related financial instrument was acquired;

(c) whether the offeror or person has or had the ability, formally or informally, to obtain the voting or equity securities or to direct the voting of voting securities held by a counterparty to the related financial instrument;

(d) a description of any past or present relationship between the offeror or person and a counterparty to the related financial instrument, or an affiliate of the counterparty, including, for greater certainty, the name of the counterparty and, if applicable, the affiliate, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the offeree issuer, or, if there is no such relationship, a statement to that effect.

(2) If the offeror, or any person acting jointly or in concert with the offeror, is a party, or has been a party at any time during the 6-month period preceding the date of the take-over bid, to any agreement, arrangement or understanding that has or had the effect of altering, directly or indirectly, the economic exposure of the offeror or person to the offeree issuer and disclosure is not otherwise required under subsection (1), disclose the following:

(a) the material terms of the agreement, arrangement or understanding and its impact on the offeror's or person's economic exposure to the offeree issuer;

(b) the date of the agreement, arrangement or understanding;

(c) a description of any past or present relationship between the offeror or person and a counterparty to the agreement, arrangement or understanding, or an affiliate of the counterparty, including, for greater certainty, the name of the counterparty and, if applicable, the affiliate, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the offeree issuer, or, if there is no such relationship, a statement to that effect..

24. Form 62-104F2 Issuer Bid Circular is amended

(a) in Part 1 in paragraph (a) by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System*****",***

(b) in Item 2 of Part 2 by replacing "dutch auctions***" with "***Dutch auctions***", and***

(c) in Item 8 of Part 2 by replacing the last paragraph with the following:

If an issuer intends to rely on one or more of the exceptions from the proportionate take up and payment requirements found in subsections 2.26(2), (3) and (3.1) of the Instrument relating to standard trading units, "Dutch auctions" and proportionate tenders, describe the mechanism under which securities would be deposited and taken up without proration.**.**

25. Form 62-104F3 Directors' Circular is amended in Part 1 in paragraph (a) by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

26. Form 62-104F4 Director's or Officer's Circular is amended in Part 1 in paragraph (a) by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

27. Form 62-104F5 Notice of Change or Notice of Variation is amended in Part 1 in paragraph (a) by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

28. (1) This Instrument comes into force on **[x]**.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX B

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 62-103 *THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES*

1. National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issnatues is amended by this Instrument.

2. Section 1.1 is amended in subsection (1)

(a) by replacing the definition of "equity security***" with the following:***

"equity security" has the meaning ascribed to that term in section 1.1 of NI 62-104;**,**

(b) by repealing the definition of "news release***",***

(c) in the definition of "NI 62-104***" by replacing "****Take-Over Bids and Issuer Bids***" with "****Take-Over Bids, Issuer Bids and the Early Warning System***", and***

(d) by replacing the definition of "significant change in a related financial instrument position***" with the following:***

"significant change in a related financial instrument position" means, in relation to an entity and a related financial instrument that involves, directly or indirectly, a security of a reporting issuer, any change in the entity's interest in, or right or obligation associated with, the related financial instrument if the change has a similar economic effect to an increase or decrease in the entity's securityholding percentage in a class of voting or equity securities of the reporting issuer in respect of which the entity would be required to file a report under the early warning requirements or, if the entity is relying on the exemption in section 4.1, Part 4;**.**

3. Section 4.3 is amended by adding the following subsection:

(5) If an eligible institutional investor that is not relying on the exemption in section 4.1, including, for greater certainty, an eligible institutional investor that was but is no longer disqualified under section 4.2 from filing reports under this Part, intends to file reports under this Part for the reporting issuer, the eligible institutional investor shall

(a) promptly issue and file a news release that includes a statement that the eligible institutional investor is eligible to file reports under this Part and that it intends to do so for the reporting issuer; and

(b) file a report in accordance with paragraph 4.5(a)**.**

4. Section 4.5 is amended by replacing paragraph (c) with the following:

(c) within 10 days after the end of the month in which the securityholding percentage of the eligible institutional investor in a class of voting or equity securities of the reporting issuer, as at the end of the month, increased or decreased past

(i) 12.5 percent of the outstanding securities of the class, or

(ii) each 2.5 percent threshold in excess of 12.5 percent of the outstanding securities of the class; and**.**

5. Form 62-103F1 Required Disclosure under the Early Warning Requirements is amended

(a) by replacing the Instruction under Item 2 with the following:

INSTRUCTIONS

(i) If the acquiror is a corporation, partnership, trust, fund, association, syndicate, organization or organized group of persons, provide its name, the address of its head office, its jurisdiction of incorporation or organization, and its principal business.

*(ii) If the acquiror is neither an individual nor a reporting issuer, provide the name of each person or company that controls, within the meaning of section 1.4 of NI 62-104, the acquiror.***,**

(b) in section 3.6 of Item 3 by adding "in, and economic exposure to, the issuer***" after "***impact on the acquiror's securityholdings***", and***

(c) in section 3.8 of Item 3 by adding "and its impact on the acquiror's economic exposure to the issuer***" after "***material terms of the agreement, arrangement or understanding***".***

6. Form 62-103F2 Required Disclosure by an Eligible Institutional Investor under Section 4.3 is amended in Item 3

(a) in section 3.5 by adding "in, and economic exposure to, the issuer***" after "***impact on the eligible institutional investor's securityholdings***", and***

(b) in section 3.7 by adding "and its impact on the eligible institutional investor's economic exposure to the issuer***" after "***material terms of the agreement, arrangement or understanding***".***

7. Form 62-103F3 Required Disclosure by an Eligible Institutional Investor under Part 4 is amended in Item 3

(a) in section 3.5 by adding "in, and economic exposure to, the issuer***" after "***impact on the eligible institutional investor's securityholdings***", and***

(b) in section 3.7 by adding "and its impact on the eligible institutional investor's economic exposure to the issuer***" after "***material terms of the agreement, arrangement or understanding***".***

8. (1) This Instrument comes into force on **[x]**.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX C

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.

2. Section 1.1 is amended in subsection (1) by adding the following definitions:

"economic exposure" has the same meaning as in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;***;***

"equity equivalent derivative" has the same meaning as in National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System*;***;***

"related financial instrument" has the same meaning as in National Instrument 55-104 *Insider Reporting Requirements and Exemptions*;**.**

3. Section 9.2 is amended in paragraph (4)(c) by replacing subparagraph (ii) with the following:

(ii) the information required under item 2, sections 3.2, 3.3 and 3.4 of item 3, paragraphs (b) and (d) of item 5 and section 6.6 of item 6 of Form 51-102F5 *Information Circular*,**.**

4. Form 51-102F2 Annual Information Form is amended in section 18.1 of Item 18

(a) under "*Form 51-102F5 Reference*" by replacing "*Item 6 – Voting Securities and Principal Holders of Voting Securities*" with "*Item 6 – Voting Securities and Interests Affecting Economic Exposure*", and

(b) under "*Modification*" opposite "*Item 6 – Voting Securities and Interests Affecting Economic Exposure*" by replacing "*Do not include the disclosure specified in sections 6.2, 6.3 and 6.4.*" with "*Do not include the disclosure specified in sections 6.2, 6.3, 6.4, 6.6, 6.7 and 6.8.*".

5. Form 51-102F5 Information Circular is amended

(a) in Item 6 in the heading by replacing "*Principal Holders of Voting Securities*" with "*Interests Affecting Economic Exposure*",

(b) by adding the following items:

6.6 If the solicitation is made other than by or on behalf of management of the company, state the number and the percentage of each class of voting securities of the company beneficially owned, or controlled or directed, directly or indirectly, by, and the name of, each

(a) person or company by which, or on whose behalf, the solicitation is made, and

(b) affiliate of each person or company referred to in paragraph (a).

6.7 If the solicitation is made other than by or on behalf of management of the company, disclose, for each person or company referred to in section 6.6 that has an interest in, or right or obligation associated with, a related financial instrument involving voting or equity securities of the company, including, for greater certainty, an equity equivalent derivative, the following:

(a) the material terms of the related financial instrument and its impact on the person or company's securityholdings in, and economic exposure to, the company;

(b) the date the interest in, or the right or obligation associated with, the related financial instrument was acquired;

(c) whether the person or company has the ability, formally or informally, to obtain the voting or equity securities or to direct the voting of voting securities held by a counterparty to the related financial instrument;

(d) a description of any past or present relationship between the person or company and a counterparty to the related financial instrument, or an affiliate of the counterparty, including, for greater certainty, the name of the counterparty and, if applicable, the affiliate, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the company, or, if there is no such relationship, a statement to that effect.

6.8 If the solicitation is made other than by or on behalf of management of the company, disclose, for each person or company referred to in section 6.6 that is a party to an agreement, arrangement or understanding that has the effect of altering, directly or indirectly, the economic exposure of that person or company to the company and for which disclosure is not otherwise required under section 6.7, the following:

(a) the material terms of the agreement, arrangement or understanding and its impact on the person or company's economic exposure to the company;

(b) the date of the agreement, arrangement or understanding;

(c) a description of any past or present relationship between the person or company and a counterparty to the agreement, arrangement or understanding, or an affiliate of the counterparty, including, for greater certainty, the name of the counterparty and, if applicable, the affiliate, that, to a reasonable person, could be perceived to affect that counterparty's

decision to acquire, dispose of or vote securities of the company, or, if there is no such relationship, a statement to that effect.***, and***

(c) in Item 7 in paragraph 7.1(e) by replacing "if a director***" with "***If a director***".***

6. (1) This Instrument comes into force on **[x]**.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX D

PROPOSED CHANGES TO
NATIONAL POLICY 62-203 *TAKE-OVER BIDS AND ISSUER BIDS*

1. National Policy 62-203 Take-Over Bids and Issuer Bids is changed by this Document.

2. The title of the Policy is replaced by the following:

National Policy 62-203 *Take-Over Bids, Issuer Bids and the Early Warning System.*

3. Part 1 is changed by replacing section 1.1 with the following:

1.1 Introduction – National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System* (the Instrument) governs take-over bids, issuer bids and the early warning system in all jurisdictions of Canada. This Policy and the Instrument, insofar as they relate to take-over bids and issuer bids, are together referred to as the "Bid Regime". This Policy, the Instrument and National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103), insofar as they relate to the early warning system, are together referred to as the "Early Warning System". This Policy outlines how the provincial and territorial securities regulatory authorities interpret or apply certain provisions of the Bid Regime and the Early Warning System, and provides corresponding guidance.

4. Part 2 is changed by

(a) replacing the title with "The Bid Regime***", and***

(b) adding the following sections:

2.4.1 Bid conditions – While the Instrument does not expressly regulate conditions to take-over bids, except with respect to financing arrangements, there may be circumstances where bid conditions raise public interest concerns. That may be the case if a take-over bid includes conditions that require an offeree issuer to take actions for the benefit of the offeror where a refusal to do so would entitle the offeror not to consummate its bid, or where a bid contains conditions that grant an offeror unqualified judgment or discretion to determine whether the conditions have been satisfied, thereby providing the offeror with a degree of optionality that calls into question the credibility of the bid.,

2.18 Mini-tender offers – A "mini-tender offer" refers to a widely disseminated offer to acquire outstanding voting or equity securities of an issuer where the securities subject to the offer to acquire, together with the offeror's securities, constitute in the aggregate less than 20% of the outstanding securities of the class. A mini-tender offer is not a take-over bid to which the requirements of Part 2 of the Instrument apply. However, both take-over bids and mini-tender

offers require security holders to make tendering decisions. Accordingly, certain principles underlying the Bid Regime should be applied in the context of a mini-tender offer. In particular, security holders to whom a mini-tender offer is made should be treated equally, offered identical consideration, given a reasonable period of time to consider the terms of the offer and provided with adequate information that allows them to make a reasoned decision as to whether to accept or reject the offer.

Whether a security holder has been provided with sufficient time and information will depend on the circumstances of the mini-tender offer. As a guideline, with respect to take-over bids, the Instrument contemplates a minimum deposit period of 35 days, and Form 62-104F1 *Take-Over Bid Circular* sets out the information that securities regulatory authorities have determined is relevant to a security holder's tendering decision.

Securities regulatory authorities may intervene if a mini-tender offer is conducted in a manner or in circumstances that are prejudicial to the public interest. That could arise if, for example, specific elements of the Bid Regime that are derived from the underlying principles noted above are absent, including where a mini-tender offeror varies or extends its offer either without notice to security holders or in a manner in which notice is not likely to reach them, or where a mini-tender offeror does not provide sufficient time following a variation or extension for security holders to change their minds with respect to the offer. Securities regulatory authorities may also intervene if a mini-tender offer is made at such a substantial discount to the prevailing market price of the class of securities that no reasonable security holder would tender to it except through mistake, inadvertence or misunderstanding.

Security holders to whom a mini-tender offer is made who are not in a Canadian jurisdiction may have recourse under the laws of their home jurisdictions.**,**

2.19 **Prompt payment for securities taken up –** The Bid Regime requires that offerors pay "promptly" for any securities taken up under the bid. Although not specifically defined, what we consider to be prompt in the context of the timing of payment for securities tendered under a bid and taken up is informed by the practices of the financial community, including settlement practices, then in effect. Accordingly, where the settlement period for securities trades is one business day after the trade date, we view payment within one business day from take up as being made "promptly"**.,**

2.20 **Date of the bid** – Certain exemptions from the take-over bid and issuer bid requirements refer to the market price of the securities at the "date of the bid". The date of the bid is the date on which an "offer to acquire" is made. If a person has a right to purchase securities owned by a second person (i.e., a call

option), the date of the first person's bid generally would be the date on which the first person exercises the call option rather than the date on which the second person grants the call option, as it is upon exercise that the first person's investment decision crystallizes and an offer to acquire is made. Conversely, if a person has a right to sell securities that it owns to a second person (i.e., a put option), the date of the second person's bid generally would be the date on which the second person grants the put option rather than the date on which the first person exercises the put option, as it is upon grant that the second person's investment decision crystallizes and an offer to acquire is made.***, and***

2.21 **Selective offshore repurchases** – As issuer bids are defined as offers made by issuers to persons in the local jurisdiction, offers made to security holders who are not in Canada or residents of Canada technically fall beyond the definition of "issuer bid" for the purposes of Canadian securities legislation. However, Canadian securities regulatory authorities retain public interest jurisdiction over transactions by issuers in their local jurisdiction and may determine to intervene in any given transaction if the circumstances raise public interest concerns. In general, offshore repurchases would not raise public interest concerns if an issuer conducts repurchases from a security holder who is not in Canada or a resident of Canada in the circumstances and manner described in the selective repurchase exemption set out in section 4.6.1 of the Instrument.

Issuers considering a selective offshore repurchase who have questions regarding whether such a transaction would raise public interest concerns should contact the applicable securities regulatory authorities prior to proceeding with such transaction**..**

5. Part 3 is changed by

(a) replacing the title with "Take-Over Bid Requirements and the Early Warning System***",***

(b) replacing section 3.1 with the following:

3.1 **Derivative arrangements** – The definition of "equity equivalent derivative" is intended to refer to a derivative or combination of derivatives which, either on their own or when taken together, are referenced to, or derived from, a voting or equity security of an issuer, with an economic interest that is substantially equivalent to the economic interest associated with beneficial ownership of the security. We would generally consider a derivative or combination of derivatives to substantially replicate the economic interest of owning a reference security if it provides a rate of return between 90% and 110% of the rate of return of the reference security. An equity equivalent

derivative would include a cash settled equity total return swap or substantially similar derivative.

In general, the Instrument does not require an investor to aggregate securities that it beneficially owns with reference securities underlying equity equivalent derivatives held by it for the purposes of early warning reporting. However, an investor is deemed, for purposes of sections 5.2 and 5.4 of the Instrument only, to have acquired the reference securities underlying an equity equivalent derivative during the pendency of a solicitation made under paragraph 9.1(2)(b) of National Instrument 51-102 *Continuous Disclosure Obligations*. The purpose of this deeming provision is to require, by application of the early warning system, disclosure of changes in a soliciting securityholder's aggregate economic position, whether through beneficial ownership of securities or through economic interests in equity equivalent derivatives, subsequent to the filing of its proxy circular in circumstances where its aggregate economic position is equivalent to a beneficial ownership position of 10% or more of the outstanding securities of the class.

An investor that is a party to an equity swap or similar derivative arrangement may under certain circumstances have deemed beneficial ownership of, or control or direction over, the reference voting or equity securities. This could occur where the investor has the ability, formally or informally, to obtain the voting or equity securities or to direct the voting of voting securities held by any counterparties to the transaction. This determination would be relevant for compliance with the early warning and take-over bid requirements under the Instrument.

Equity equivalent derivatives must be disclosed in compliance with securities laws, having regard to circumstances where beneficial ownership of, or control or direction over, reference securities may be deemed. The disclosure or use of equity equivalent derivatives in a manner that is abusive of the capital markets may engage securities regulatory authorities' public interest jurisdiction. For example, we may have public interest concerns where investors do not clearly and accurately differentiate between beneficial ownership of securities and economic interests in their public disclosures and instead express them as an aggregate economic interest, which can generate confusion in the market. We may also have public interest concerns where equity equivalent derivatives are used in a deliberate effort to accumulate substantial economic positions in an issuer if the holder seeks to influence the outcome of a potential take-over bid by either exerting pressure on a counterparty or communicating expectations of commercial incentives or disincentives for the counterparty or its affiliates dependent on how or when the counterparty acquires, disposes of or votes securities of the offeree issuer.

Paragraphs 2.7.1(1)(c) and 2.7.1(2)(b) of the Instrument and Item 8.1 of Form

62-104F1 *Take-Over Bid Circular* require a description of any past or present relationship between the offeror or any joint actor and a counterparty, or an affiliate of the counterparty, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the offeree issuer, or, if there is no such relationship, a statement to that effect. Such relationships may include instances where the counterparty or an affiliate of the counterparty has a material financial interest in the offeror or any joint actor, has a material financial interest in future business involving the offeror or any joint actor, acts as a financial advisor to the offeror or any joint actor, or acts as a lead or co-lead lender or manager of a lending syndicate in connection with the bid. A relationship with a counterparty, or an affiliate of that counterparty, that terminated more than 24 months before a bid was commenced generally would not have to be disclosed on the basis that it could not be perceived to affect the counterparty's decision to acquire, dispose of or vote securities of the offeree issuer.**,**

(c) adding the following sections:

3.3 Change in plans or future intentions of the acquiror or a joint actor – An acquiror that is required to make disclosure under subsection 5.2(1) of the Instrument must make further disclosure in accordance with subsection 5.2(1) each time there is a change in a material fact contained in the most recent report required to be filed under paragraph 5.2(1)(b) or subsection 5.2(2) of the Instrument. Subsection 5.2(1) of the Instrument refers to section 3.1 of NI 62-103, which in turn refers to the information required by Form 62-103F1 *Required Disclosure under the Early Warning Requirements*. Item 5 of Form 62-103F1 *Required Disclosure under the Early Warning Requirements* requires the acquiror to describe any plans or future intentions which it and any joint actor may have which relate to or would result in certain actions.

A change in plans or future intentions is a factual determination based on the circumstances of a particular transaction or a particular event. We expect that, when an acquiror or any joint actor takes significant steps with respect to a particular transaction or event, the acquiror will assess whether those actions, individually or taken together, constitute a change in the plans or future intentions disclosed in the acquiror's previous report filed under the early warning requirements.

We generally consider that a change in plans or future intentions will occur at the latest upon the execution of a definitive agreement to enter into a transaction, the commencement of a take-over bid, the public announcement of a proxy solicitation or a similar event, as applicable. However, a change in plans or future intentions may, in some instances, occur at an earlier stage of a particular transaction or a particular event. For example, if an acquiror or any joint actor has taken irrevocable steps to effect a potential transaction, or

publicly announced information or facts that differ from the plans or future intentions that were previously disclosed, then those changes generally would trigger further disclosure under the early warning requirements. The foregoing is not intended to be exhaustive of all of the circumstances in which a change in plans or future intentions, as those terms are used in Item 5 of Form 62-103F1 *Required Disclosure under the Early Warning Requirements*, may occur.

An acquiror should re-assess the accuracy of the disclosure in its reports filed under the early warning requirements in respect of the plans or future intentions of the acquiror and any joint actor every time it is required to make further disclosure, including as a result of an increase or a decrease in its securityholding percentage that triggers a filing pursuant to paragraph 5.2(2)(a) of the Instrument.

If the acquiror's most recent report filed under the early warning requirements contains general language reserving the right to take any of the actions enumerated in Item 5 of Form 62-103F1 *Required Disclosure under the Early Warning Requirements*, we expect the acquiror to update the disclosure in such report as soon as a change in plans or future intentions with respect to a particular action actually occurs.

For greater clarity, this guidance also applies with respect to disclosure required under Form 62-103F2 *Required Disclosure by an Eligible Institutional Investor under Section 4.3* and Form 62-103F3 *Required Disclosure by an Eligible Institutional Investor under Part 4*.

3.4 **Reporting of acquisitions during bid** – Eligible institutional investors who are exempt from the early warning requirements under section 4.1 of NI 62-103 cannot continue to rely on the alternative monthly reporting system and must make disclosure in accordance with section 5.4 of the Instrument if, during the pendency of a non-exempt take-over bid or issuer bid, they acquire beneficial ownership of, or control or direction over, securities of the class subject to the bid that, when added to their securities of that class, constitute 5% or more of the outstanding securities of that class. The exemption in section 4.1 of NI 62-103 is in respect of the early warning requirements in section 5.2 of the Instrument and does not extend to the requirements in section 5.4 of the Instrument.

3.5 **Applicability of the Early Warning System –** The Early Warning System and the concept of acting jointly or in concert apply to proxy solicitations generally, including for the purpose of voting on an alternative slate of directors, even in the absence of a take-over bid or issuer bid.

3.6 Calculation of early warning reporting thresholds – Section 5.2 of the Instrument is a transactional requirement and requires that an acquiror conduct an analysis and calculation each time that the acquiror acquires one of the categories of securities referred to in that provision (i.e., a voting or equity security of a reporting issuer, or a security convertible into voting or equity securities of a reporting issuer). The securities that are the subject of the transaction at hand form the first part of the calculation.

Convertible securities that are not exercisable within 60 days are one of the categories of securities subject to section 5.2 of the Instrument, as they are "securities convertible into voting or equity securities of any class of a reporting issuer." Accordingly, where the subject transaction involves convertible securities, those convertible securities should be included in the first part of the calculation, irrespective of whether or not they are convertible within 60 days and irrespective of any conditions attached to them.

The securities that are the subject of the transaction at hand then need to be added to the second part of the calculation, being the "acquiror's securities" (determined in accordance with the provisions of the Instrument) to arrive at the numerator to be used for the securityholding percentage calculation.

The term "acquiror's securities" is defined as "securities of an issuer beneficially owned, or over which control or direction is exercised, on the date of the acquisition or disposition, by an acquiror or any person acting jointly or in concert with the acquiror." As the reference is to those securities "beneficially owned", whether convertible securities will be included as part of the "acquiror's securities" is to be determined with reference to section 1.8 of the Instrument.

The following are illustrative examples of the early warning reporting calculation:

> An acquiror has 2,000 common shares and 1,000 options of IssuerCo. The acquiror acquires 500 warrants in IssuerCo in a trade. As of the trade date, none of the warrants are exercisable within 60 days and none of the options are exercisable within 60 days. The numerator, for the purposes of calculating the acquiror's securityholding percentage, would be 2,500 (consisting of the 500 warrants acquired that are not exercisable within 60 days and the 2,000 common shares comprising the "acquiror's securities"), and the denominator would be IssuerCo's number of common shares outstanding, unadjusted by any of the convertible securities held by the acquiror.

If the acquiror subsequently purchases an additional 200 warrants, the analytical exercise is repeated. As of this subsequent trade date, assume that none of the newly acquired warrants are exercisable within 60 days, that 250 of the 1,000 options held by the acquiror have vested (or will vest within 60 days) and that 300 of the 500 previously acquired warrants are now exercisable (or will be exercisable within 60 days). The numerator, for the purposes of the acquiror's securityholding percentage, would be 2,750 (consisting of the 200 newly acquired warrants that are not exercisable within 60 days and the "acquiror's securities", which would include the 2,000 common shares, the 250 vested options and the 300 currently exercisable warrants). The 250 vested options and 300 currently exercisable warrants forming part of the "acquiror's securities" would be added to IssuerCo's outstanding common shares to form the denominator of the securityholding percentage calculation.

Section 1.8 of the Instrument deems an acquiror to have acquired and to be the beneficial owner of a security, including an unissued security, if the acquiror is the beneficial owner of a security convertible into the security within 60 days following that date. Accordingly, the calculation of early warning reporting thresholds should be undertaken each time (a) a convertible security that is not exercisable within 60 days becomes exercisable within 60 days as a result of the passage of time, and (b) a convertible security that is exercisable within 60 days expires, lapses or terminates in accordance with its terms.

3.7 **Calculating beneficial ownership on a fully diluted basis in limited circumstances –** The early warning reporting calculations are to be done on a partially diluted basis. However, in circumstances where the acquiror is acquiring convertible securities as part of a treasury offering and the terms of the convertible securities provide that either all of the convertible securities issued pursuant to such offering convert into the underlying voting or equity securities, or none of them do (for example, in a subscription receipt offering, or a fully backstopped rights offering), beneficial ownership may be calculated on a fully diluted basis as, in those circumstances, it would not be possible for only some (but not all) of the underlying securities in respect of that offering to be issued.

3.8 **Trigger for subsequent alternative monthly reports** – An eligible institutional investor who satisfies the criteria set out in, and who is filing reports under, Part 4 of NI 62-103 for a reporting issuer (each, an AMR Filer) is required to file a report in accordance with Part 4 of NI 62-103 if the securityholding percentage of the AMR Filer in a class of voting or equity

securities of the reporting issuer as of the end of the month in which the AMR Filer has acquired or disposed of beneficial ownership of, or acquired or ceased to have control or direction over, any securities of the class crosses one of the fixed 2.5% thresholds starting at 10% (*e.g.,* 10%, 12.5%, 15%, 17.5%, etc.) when compared to the AMR Filer's most recently filed report. For example, if an AMR Filer has reported an 11.5% securityholding percentage in a class of voting or equity securities of a reporting issuer and the AMR Filer acquires an aggregate of 1.2% of the securities of that class over the course of a month such that, as of the end of the month, the AMR Filer's securityholding percentage in the class is 12.7%, the AMR Filer would be required to file a report in accordance with Part 4 of NI 62-103. This AMR Filer's next report would be required when its securityholding percentage in that class of securities decreases below 12.5% or increases above 15%.

3.9 **Issuer actions** – Section 6.1 of NI 62-103 provides an entity with an exemption from the early warning requirements and the obligation to report under Part 4 of NI 62-103 until the entity undertakes a trade, at which time the entity must assess its post-trade securityholding percentage in the class of securities of the reporting issuer relative to the securityholding percentage in that class that the entity reported in its most recent early warning report or alternative monthly report, as applicable.

If the entity is not reporting under Part 4 of NI 62-103 and its securityholding percentage following the trade represents a 2% or greater change when compared to its most recently filed early warning report, then a subsequent early warning report and news release would be required. The following are illustrative examples of the issuer action exemption in the context of the early warning requirements:

> A person has, and has reported, a 12% ownership position in a class of voting or equity securities of a reporting issuer. The reporting issuer conducts a repurchase of securities of the class, in which the person does not participate, that causes the person's securityholding percentage to increase to 14.5%. Pursuant to section 6.1 of NI 62-103, the person is not required to issue and file a news release or file a report at the time of the issuer action. Subsequent to the issuer action, the person acquires securities that amount to 1% of the class, increasing the person's securityholding percentage to 15.5%. As the person's securityholding percentage (i.e., 15.5%) represents a 2% or greater change in percentage ownership from the 12% that it most recently reported, the person is required to issue and file a news release and file a report in accordance with section 5.2 of the Instrument.
>
> A person has, and has reported, a 12% ownership position in a class

of voting or equity securities of a reporting issuer. The reporting issuer undertakes a private placement of securities of the class, in which the person does not participate, that causes the person's securityholding percentage to decrease to 11%. Pursuant to section 6.1 of NI 62-103, the person is not required to issue and file a news release or file a report at the time of the issuer action. Subsequent to the issuer action, the person acquires securities that amount to 2% of the class, increasing the person's securityholding percentage to 13%. As the person's securityholding percentage (i.e., 13%) represents only a 1% change in percentage ownership from the 12% that it most recently reported, the person is not required to issue and file a news release or file a report in accordance with section 5.2 of the Instrument.

If the entity is an AMR Filer and its securityholding percentage as at the end of the month in which it undertook a trade, when compared to its most recently filed alternative monthly report, increased or decreased past one of the fixed 2.5% thresholds starting at 10% (*e.g.,* 10%, 12.5%, 15%, 17.5%, etc.), then an alternative monthly report would be required. The following are illustrative examples of the issuer action exemption in the context of the alternative monthly reporting system:

An AMR Filer has, and has reported, a 12% ownership position in a class of voting or equity securities of a reporting issuer. The reporting issuer conducts a repurchase of securities of the class, in which the AMR Filer does not participate, that causes the AMR Filer's securityholding percentage to increase to 14.5%. The AMR Filer does not undertake a trade in securities of that class in the month in which the issuer action occurred. Pursuant to section 6.1 of NI 62-103, the AMR Filer is not required to file a report in accordance with Part 4 of NI 62-103 in respect of the month in which the issuer action occurred. In the following month, the AMR Filer undertakes various trades in the class of securities, such that its securityholding percentage, as at the end of that month, is 15.5%. As the AMR Filer's securityholding percentage (i.e., 15.5%) has increased past the 12.5% and 15% reporting thresholds since the AMR Filer's most recently filed report, the AMR Filer is required to file a report in accordance with Part 4 of NI 62-103 in respect of that month.

An AMR Filer has, and has reported, a 12% ownership position in a class of voting or equity securities of a reporting issuer. The reporting issuer undertakes a private placement of securities of the class, in which the AMR Filer does not participate, that causes the

AMR Filer's securityholding percentage to decrease to 9%. The AMR Filer does not undertake a trade in securities of that class in the month in which the issuer action occurred. Pursuant to section 6.1 of NI 62-103, the AMR Filer is not required to file a report in accordance with Part 4 of NI 62-103 in respect of the month in which the issuer action occurred. In the following month, the AMR Filer undertakes various trades in the class of securities, such that its securityholding percentage, as at the end of that month, is 11%. As the AMR Filer's securityholding percentage (i.e., 11%) has not increased or decreased past one of the fixed 2.5% thresholds since the AMR Filer's most recently filed report, the AMR Filer would not be required to file a report in accordance with Part 4 of NI 62-103 in respect of that month. The AMR Filer's next report would be required when its securityholding percentage in that class of securities decreases past 10% or increases past 12.5%**.**

Effective Date

6. These changes become effective on **[x]**.

ANNEX E

PROPOSED CHANGES TO
COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. Companion Policy 51-102CP Continuous Disclosure Obligations is changed by this Document.

2. Part 9 is changed by adding the following section:

Derivative Arrangements

9.4 Section 3.1 of National Policy 62-203 *Take-Over Bids, Issuer Bids and the Early Warning System* provides guidance for the definition of "equity equivalent derivative". It also sets out when an investor must aggregate securities that it beneficially owns with reference securities underlying equity equivalent derivatives held by it for the purposes of early warning reporting.

The disclosure or use of equity equivalent derivatives in a manner that is abusive of the capital markets may engage securities regulatory authorities' public interest jurisdiction. For example, we may have public interest concerns where investors do not clearly and accurately differentiate between beneficial ownership of securities and economic interests in their public disclosures and instead express them as an aggregate economic interest, which can generate confusion in the market. We may also have public interest concerns where equity equivalent derivatives are used in a deliberate effort to accumulate substantial economic positions in an issuer if the holder seeks to influence the outcome of a matter subject to securityholder approval by either exerting pressure on a counterparty or communicating expectations of commercial incentives or disincentives for the counterparty or its affiliates dependent on how or when the counterparty acquires, disposes of or votes securities of the issuer.

If a solicitation is made other than by or on behalf of management, items 6.7 and 6.8 of Form 51-102F5 *Information Circular* require a description of any past or present relationship between a person or company referred to in item 6.6 of Form 51-102F5 *Information Circular* and a counterparty, or an affiliate of the counterparty, that, to a reasonable person, could be perceived to affect that counterparty's decision to acquire, dispose of or vote securities of the company, or, if there is no such relationship, a statement to that effect. Such relationships may include instances where a counterparty or an affiliate of the counterparty has a material financial interest in the person or company, has a material financial interest in future business involving the person or company, acts as a financial advisor to the person or company, or acts as a lead or co-lead lender or manager of a lending syndicate in connection with the solicitation. A relationship with a counterparty, or an affiliate of that counterparty, that terminated more than 24 months before a solicitation was commenced generally would not

have to be disclosed on the basis that it could not be perceived to affect the counterparty's decision to acquire, dispose of or vote securities of the company**.**

Effective Date

3. These changes become effective on **[x]**.

ANNEX F

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 13-102 *SYSTEM FEES*

1. Multilateral Instrument 13-102 System Fees is amended by this Instrument.

2. Appendix A is amended in Column B of Item 10 by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids"* ***with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System"* ***wherever the expression appears.***

3. (1) This Instrument comes into force on **[x]**.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX G

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 43-101 *STANDARDS OF DISCLOSURE FOR MINERAL PROJECTS*

1. National Instrument 43-101 Standards of Disclosure for Mineral Projects is amended by this Instrument.

2. Section 1.1 is amended in the definition of "initial deposit period***" by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids"* ***with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System"*.**

3. (1) This Instrument comes into force on **[x]**.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX H

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. National Instrument 44-102 Shelf Distributions is amended by this Instrument.

2. Subsection 9B.1(3) is amended by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

3. (1) This Instrument comes into force on **[x]**.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX I

PROPOSED AMENDMENTS TO MULTILATERAL INSTRUMENT 51-105 *ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS*

1. Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets is amended by this Instrument.

2. Section 16 is amended by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids"* ***with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System"****.***

3. (1) This Instrument comes into force on **[x]**.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX J

PROPOSED AMENDMENTS TO
MULTILATERAL INSTRUMENT 61-101 *PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS*

1. ***Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is amended by this Instrument.***

2. ***Section 1.1 is amended by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****" wherever the expression appears.***

3. ***Subsection 1.6(2) is amended by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

4. ***Paragraph 2.2(1)(d) is amended by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

5. ***Paragraph 4.2(3)(a) is amended by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

6. ***Paragraph 5.3(3)(a) is amended by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

7. ***Section 6.10 is amended by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

8. (1) This Instrument comes into force on **[x]**.

   (2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after **[x]**, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

ANNEX K

PROPOSED CHANGES TO
COMPANION POLICY 55-104CP *INSIDER REPORTING REQUIREMENTS AND EXEMPTIONS*

1. Companion Policy 55-104CP Insider Reporting Requirements and Exemptions is changed by this Document.

2. Subsection 3.2(3) is changed by replacing "National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****".***

Effective Date

3. These changes become effective on **[x]**.

ANNEX L

PROPOSED CHANGES TO
COMPANION POLICY 61-101CP *TO MULTILATERAL INSTRUMENT 61-101*
PROTECTION OF MINORITY SECURITY HOLDERS IN SPECIAL TRANSACTIONS

1. ***Companion Policy 61-101CP to Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions is changed by this Document.***

2. ***Section 4.1 is changed by replacing "***National Instrument 62-104 *Take-Over Bids and Issuer Bids****" with "***National Instrument 62-104 *Take-Over Bids, Issuer Bids and the Early Warning System****" wherever the expression appears.***

Effective Date

3. These changes become effective on **[x]**.